SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 856

W. B. WORTHEN COMPANY, AGENT; GEORGE G. WORTHEN AND MOLLIE P. WORTHEN, APPELLANTS,

vs.

MRS. W. D. THOMAS

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS

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IN CIRCUIT COURT OF PULASKI COUNTY

W. B. WORTHEN COMPANY, Agent, Plaintiff,

vs.

RALPH THOMAS and MRS. W. D. THOMAS, Partners, Trading as Enterprise Harness Company, Defendants

COMPLAINT

Plaintiff, W. B. Worthen Company, Agent, for its cause of action against the defendants, Ralph Thomas and Mrs. W. D. Thomas, partners trading as Enterprise Harness Company, states:

That W. B. Worthen Company is a banking corporation duly organized and existing under the laws of the State of Arkansas, domiciled at Little Rock, Arkansas; that the defendants, Ralph Thomas and Mrs. W. D. Thomas, are partners operating under the trade name of Enterprise Harness Company.

That plaintiff, W. B. Worthen Company, as agent, has charge of the rental of the property located at 400 West 6th Street, Little Rock, Arkansas, where the Enterprise Harness Company was located, and in its capacity as Agent, rented said property to the Enterprise Harness Company, making said contract with Ralph Thomas, one of the partners therein.

That the rental on said property was $175.00 per month until March 5, 1932, and the rent on same thereafter was $150 per month.

That nothing has been paid on the rent due by said Enterprise Harness Company since the 17th day of Novem- [fol. 5] ber, 1931. That there is an exact balance due on said rent figured from November 17, 1931 until July 5, 1932 of $1,200.00. Itemized verified account, setting out same in detail, is attached hereto marked Exhibit "A" and made a part of this complaint.

That nothing has been paid on said sum of $1,200.00, although it is past due and demand has been duly made for payment.

Wherefore, plaintiff, W. B. Worthen Company, Agent, prays for judgment against defendants, Ralph Thomas and Mrs. W. D. Thomas, partners trading as Enterprise Harness Company, and each of them, for $1,200.00 with interest thereon at the rate of 6% per annum from July 5, 1932 until paid, for its costs herein expended and all other proper relief.

Murphy & Murphy, Attorneys for Plaintiff.

[fol. 6] EXHIBIT "A" TO COMPLAINT

W. B. Worthen Company, Bankers

"Since 1877"

401 Main Street. Telephone 4-4395, Long Distance 63

Little Rock, Arkansas,
July 5, 1932.

In account with Ralph Thomas and Mrs. W. D. Thomas, trading as the Enterprise Harness Company, 400 West Sixth Street, Little Rock, Arkansas

To balance rent on 400 West Sixth Street, Little Rock, Arkansas:

From November 17, 1931, to December 5, 1931 (@ $175.00 per month)	75.00
December 5, 1931 to January 5, 1932	175.00
January 5, 1932 to February 5, 1932	175.00
February 5, 1932 to March 6, 1932	175.00
From March 5, 1932 to April 5, 1932 (@ $150.00 per month)	150.00
April 5, 1932 to May 5, 1932	150.00
May 5, 1932 to June 5, 1932	150.00
June 5, 1932 to July 5, 1932	150.00
	$1,200.00

This is to certify that the above is a true and correct statement of account due by Ralph Thomas and Mrs. W. D. Thomas, trading as the Enterprise Harness Company.

W. B. Worthen Company, Agents, by Geo. G. Worthen, Vice President.

STATE OF ARKANSAS,
County of Pulaski, ss:

Subscribed and sworn to before me, a Notary Public, this fifth day of July, 1932. Jeannette Fairchild Turner, Notary Public. My commission expires February 12, 1933. (Seal.)

[fol. 7] IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

BOND—Filed July 6, 1932

We, W. B. Worthen Company, Agent, the above named plaintiff, as principal and Geo. G. Worthen and Gordon N. Peay, as its sureties, acknowledge ourselves to owe and be indebted unto Ralph Thomas and Mrs. W. D. Thomas, partners trading as Enterprise Harness Company, the above named defendants, in the sum of $2,500.00, conditioned, however, as follows:

Whereas, the said W. B. Worthen Company, Agent, has instituted suit in the Pulaski Circuit Court against the said Ralph Thomas and Mrs. W. D. Thomas, partners trading as Enterprise Harness Company, for the sum of $1200.00, together with costs of said suit, and has caused the issuance of a writ of garnishment therein;

Now, if the said W. P. Worthen Company, Agent, shall pay the said Ralph Thomas and Mrs. W. D. Thomas, trading as Enterprise Harness Company, all damages that they may sustain by the wrongful bringing of such suit, or the wrongful issuance of said writ of garnishment, then this obligation to be void; otherwise, to remain in full force and effect.

W. B. Worthen Company, Agent, by Geo. G.
[fol. 8] Worthen, Vice President. Geo. G. Worthen, Gordon N. Peay, Sureties.

[Endorsed:] "Filed and summons and garnishment writs issued July 6, 1932.

Sheriff's return shows service of summons upon Ralph Thomas and Mrs. W. D. Thomas each in person, Trading as Enterprise Harnes- Company, 8th day of July.)

[fol. 9] IN CIRCUIT COURT OF PULASKI COUNTY,
SECOND DIVISION, MARCH TERM, 1932

W. B. WORTHEN COMPANY, Agent, Plaintiff,

v.

RALPH THOMAS and MRS. W. D. THOMAS, Partners, Trading as Enterprise Harness Company, Defendants

JUDGMENT—August 31, 1932

On this day comes plaintiff by its attorneys, Murphy & Murphy, and the defendants, although each solemnly called three times at the bar of this Court, come not, but wholly make default; and it appears to the Court from the return of the sheriff filed herein that the defendants were, on the 8th day of July, 1932, duly served with summons notifying them of the pendency hereof, and that they have failed to answer or to plead in any manner herein; and this cause now coming on to be heard, plaintiff announces ready for trial; whereupon this cause is submitted to the Court upon the pleadings and the verified statement of account sued upon; and the Court, being well and sufficiently advised as to all matters of law and fact arising herein, doth find that the defendants are justly indebted unto the plaintiff upon the account sued upon in the sum of $1200.00, with interest thereon at the rate of 6% per annum from the 5th day of July, 1932;

It is, therefore, considered, ordered and adjudged by the Court that the plaintiff, W. B. Worthen Company, Agent, do have and recover of and from the defendants, Ralph Thomas and Mrs. W. D. Thomas, partners, trading as Enterprise [fol. 10] Harness Company, the sum of $1200.00, with interest thereon at the rate of 6% per annum from the 5th day of July, 1932, which interest to this date amounts to the sum of $11.40, amounting in the aggregate to the sum of Twelve Hundred Eleven and 40/100 ($1211.40) Dollars, for its debt

and interest to this date, together with all of its costs in and about this cause expended, for which execution may issue.

And plaintiff moves the court for an order permitting immediate execution to issue; and the court, being well and sufficiently advised, doth grant said motion.

The following endorsement appears upon the margin of the record of the foregoing judgment:

"For value received Lot 15 Block 20 Pfeifer Addn. to City of Little Rock, Ark., is released from the lien of this judgment this 4th May, 1933. W. B. Worthern Co., Agt., by James Keith, V. P. Attest: B. T. Hoff, Clerk, by V. S. O'Neal, D. C. 5/4/33."

[fol. 11] IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

ALLEGATIONS AND INTERROGATORIES FOR GARNISHMENT—Filed March 10, 1933.

Comes said plaintiff and files the following allegations and interrogatories:

Said plaintiff alleges:

First. That said Missouri State Life Insurance Company, the garnishee herein, was on and after the date of the service of the writ of garnishment herein, indebted to said Mrs. W. D. (or Van C.) Thomas, the defendant, to wit: In the sum of Five Thousand ($5,000.00) Dollars.

Second. That said garnishee, on and after the date aforesaid, had in its hands and possession, certain goods, chat-
[fol. 12] tels, moneys, credits and effects belonging to said defendant, of the value of Five Thousand ($5,000.00) Dollars.

And the plaintiff propounds to the said garnishee the following interrogatories:

First: Were you on or after the date of the service of the writ of garnishment, indebted to defendant, Mrs. W. D. (or Van C.) Thomas? If so, how were you indebted, and for what amount?

Second. Had you in your hands and possession, on or after said date, any goods, chattels, moneys, credits or effects belonging to said defendant? If so, what was the nature and value thereof?

Murphy & Murphy, Attorneys for Plaintiff.

[Endorsed:] "Filed and writs of garnishment issued Mar. 10, 1933. B. T. Hoff, Circuit Clerk, by O. L. McNair, D. C."

[fol. 13] IN CIRCUIT COURT OF PULASKI COUNTY

No. 24506

WRIT OF GARNISHMENT AND RETURN—Filed March 16, 1933

STATE OF ARKANSAS,
County of Pulaski:

To the Sheriff of Pulaski County, Greeting:

Whereas, W. B. Worthen Company, Agent, obtained a judgment in the Pulaski Circuit Court on the 31st day of August, 1932, in an action of debt against Ralph Thomas and Mrs. W. D. Thomas, partners, trading as Enterprise Harness Company, for the sum of Twelve Hundred Eleven and 40/100 ($1211.40) Dollars debt, and also the sum of — Dollars damages, with interest thereon at six per cent per annum, from the 31st day of August, 1932, until paid, together with *costs in that case* expended, which judgment still remains unsatisfied; and,

Whereas, it is alleged by said plaintiff that it has reason to believe that Missouri State Life Insurance Company is indebted to said Mrs. W. D. (or Van C.) Thomas, or has in its hands and possession goods, chattels, moneys, credits and effects belonging to said defendant.

Now therefore, You are hereby commanded to summon the said Missouri State Life Insurance Company, if it can be found within your ba-liwick, to appear before the Judge of our Circuit Court of Pulaski County, at the court house in the county aforesaid, within twenty days from the service of this writ upon it, then and there to answer what goods, chattels, moneys, credits and effects it may have in its hands

or possession belonging to said defendant, Mrs. W. D. (or Van C.) Thomas, to satisfy the judgment aforesaid; and [fols. 14 & 15] also to answer such further interrogatories as may be exhibited against it, and that you will make due return of this writ to our said circuit court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Little Rock, Arkansas, on this 10th day of March, 1933.

B. T. Hoff, Clerk, by O. L. McNair, D. C. (Seal.)

STATE OF ARKANSAS,
County of Pulaski, ss:

The within writ came to my hands on the 10th day of March, 1933, A. D. at 11:25 o'clock A. M., and I have, this 10th day of March, 1933, A. D. at 11:50 o'clock A. M., duly served the same by delivering a true copy thereof to Missouri State Life Insurance Company by delivering a true copy to U. A. Gentry, State Insurance Commissioner, agent designated for service, in said county, as herein commanded.

L. B. Branch, Sheriff, by Harry Narkinsky, D. S.

Service	$.75
Mileage	.10
Total	.85

[File endorsement omitted]

[fol. 16] IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

MOTION TO DISMISS WRIT OF GARNISHMENT—Filed April 5, 1933

Comes the defendant, Mrs. W. D. Thomas, and by leave of the court files herewith her motion to dismiss a certain writ of garnishment issued by the clerk of this court on the 10th day of March, 1933, and for the further purpose of scheduling a certain sum of money owed her by the Mis-

souri State Life Insurance Company as exempt from garnishment or seizure, and for cause states:

That on or about the — day of ——, 1932, plaintiff W. B. Worthern Company filed an action in the Pulaski Circuit Court asking for judgment against the defendants herein. That on or about the — day of ——, 1932, a judgment by default was rendered against the defendants in favor of the plaintiff in this action for the sum of $1200 and costs. That on or about the 10th day of March, 1933, the plaintiff had the clerk of this court issue a writ of garnishment and interrogatories, which writ of garnishment and interrogatories were served on the Missouri State Life Insurance Company.

That the Missouri State Life Insurance Company is indebted to this defendant, Mrs. W. D. Thomas, in the sum of Five Thousand Eight- Seven and 80/100 Dollars ($5087.50) by reason of the said defendant, Mrs. W. D. Thomas, being the beneficiary of the policy of insurance upon the life of [fol. 17] her husband, W. D. Thomas, who died on March 5, 1933.

That under the laws of this state any moneys paid or payable to any resident of this state as the beneficiary designated under any life insurance policy is exempt from liability or seizure under any judicial process of any court, or shall it be subject to the payment of any debt by contract by any writ, order, judgment or decree of any court of this state.

That under and by virtue of the laws of this state, the defendant, Mrs. W. D. Thomas, is claiming the aforesaid amount owed her by the Missouri State Life Insurance Company as exempt from garnishment, seizure or attachment.

Wherefore, defendant, Mrs. W. D. Thomas, prays that an order issue from this court releasing the aforesaid sum of money from the aforementioned writ of garnishment, for her costs herein expended, and for all other proper relief.

Harry Robinson, Attorney for Defendant Mrs. W. D. Thomas.

Duly sworn to by Mrs. W. D. Thomas. Jurat omitted in printing.

[fol. 18] [File endorsement omitted.]

[fol. 19] IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

ANSWER OF GARNISHEE—Filed April 6, 1933

Heretofore this garnishee issued to W. D. Thomas its policy No. 868,000 in the amount of $5,000. The defendant, Mrs. W. D. Thomas, known also as Van Cleve Thomas, is designated as beneficiary therein, and she has made claim on this garnishee for the proceeds of said policy. By reason of certain accumulations on said policy this garnishee admits an indebtedness thereunder in the amount of $5,057.80. It is ready to pay this amount to the said beneficiary when authorized to do so by an order of this court.

Answering further, this garnishee states that by the provisions of Act 102, enacted by the General Assembly of the State of Arkansas, at its 1933 session, all monies payable to any resident of this State under a policy of insurance are exempt and not subject to seizure under judicial process of any court. The defendant, Mrs. W. D. Thomas, is a resident of this State.

Wherefore, having fully answered, this garnishee prays that the court enter an order discharging it of all liability [fols. 20 & 21] to the plaintiff, and that it be authorized to pay the proceeds of the policy aforesaid to the defendant, Mrs. W. D. Thomas.

Rose, Hemingway, Cantrell & Loughborough, Attorneys for Garnishee.

[File endorsement omitted.]

[fol. 22] IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

RESPONSE TO MOTION TO DISMISS—Filed April 20, 1933

Comes W. B. Worthen Company, Agent, by its attorneys, Murphy & Murphy, and for response to motion to dismiss filed by the defendant, Mrs. W. D. Thomas, states:

That on the 7th day of July, 1932, a suit was filed in the Pulaski Circuit Court by W. B. Worthen Company, Agent,

versus Ralph Thomas and Mrs. W. D. Thomas, partners trading as Enterprise Harness Company, and a judgment was entered therein against the defendants, Ralph Thomas and Mrs. W. D. Thomas, partners trading as Enterprise Harness Company, and each of them, on August 31, 1932, [fol. 23] for $1,211.40 plus interest thereon at the rate of 6% per annum from August 31, 1932, until paid and for its costs expended therein. Thereafter an execution was issued out of said court against Ralph Thomas and Mrs. W. D. Thomas, partners trading as Enterprise Harness Company, and said execution was return unsatisfied. Thereafter on the 10th day of March, 1933, a writ of garnishment was issued out of the Pulaski Circuit Court in said case by the plaintiff with allegations and interrogatories attached directed to and served upon the Missouri State Life Insurance Company alleging that it had in its hands and possession the sum of $5,000.00 belonging to the defendant herein, Mrs. W. D. Thomas. Said writ of garnishment was served on the Missouri State Life Insurance Company on March 10, 1933. On April 6, 1933, the Missouri State Life Insurance Company, garnishee in said action, filed its answer in the above styled case, wherein it admitted that W. D. Thomas had policy No. 868,000 in the Missouri State Life Insurance Company in the sum of $5,000, and that the defendant, Mrs. W. D. Thomas, was the beneficiary therein. The said garnishee in said answer admitted that it owed Mrs. W. D. Thomas, defendant herein, the sum of $5,057.80 at the time the writ of garnishment was served upon it by the plaintiff herein and that it was ready and willing to pay said sum.

That on or about the 6th day of April, 1933, the said Missouri State Life Insurance Company, garnishee herein, acting under order signed by the judge of the Pulaski Circuit Court, Second Division, paid into the registry of this court [fol. 24] the sum of $2,000 for the purpose of paying the claim of the plaintiff herein under its writ of garnishment against Missouri State Life Insurance Company and upon payment of said money into the registry of this court, the said garnishee, Missouri State Life Insurance Company was released.

In response to motion of the defendant, Mrs. W. D. Thomas, that said writ of garnishment be dismissed, peti-

tioners state that this writ of garnishment was served on Missouri State Life Insurance Company on the 10th day of March, 1933, and under the law of Arkansas, the lien of a garnishment dates from the time served and the service of said writ creates a lien and no subsequent arrangement or cancellation of the indebtedness between the garnishee and defendant could destroy said lien. That has always been the law of Arkansas under a writ of garnishment. Said lien having attached against this money on March 10, 1933 would in no way be effected by the passage of Act 102 of the 1933 Legislature which did not become a law until the 16th of March, 1933. It was not intended that Act 102 should have any effect on suits then pending as it was only an addition added to the provisions of Acts 76 and 141 of the Acts of the General Assembly of 1931 and both of those acts specifically state that they in no way affect suits pending at the time of their passage. In the case at bar the suit was not only pending, but the lien of the garnishment had attached to this money before Act 102 ever became a law. Act 102 refers only to writs or seizure under judicial process of any court, which shall issue after its passage, so it [fol. 25] could in no sense affect a garnishment which became a lien six days before its passage.

If said Act 102 were to cancel and set aside liens and rights of parties which were in effect at the time of its passage, thus reaching back to set aside rights then in effect, it would be a violation of Article 1 Section 9 of the Constitution of the United States which provides that no ex post facto law shall be passed. It would also be a violation of Article 1 Section 10 of the Constitution of the United States which provides that no state shall pass any ex post facto law or law impairing the obligation of contracts. If Act 102 were to affect this garnishment, which became a lien upon this money on the 10th day of March, 1933, six days before the law became effective, then it would be an ex post facto law. If Act 102 were to set aside the lien of this writ of garnishment which was in effect at the time the law was approved, it would be impairing the obligation of an existing contract.

Your petitioners further invite the court's attention to the fact that Act 102 does not apply at all in the case at bar as the only purpose of Act 102 was to set out more clearly and add provisions to Acts 76 and 141 of the Acts

of the General Assembly of 1931. Those acts have reference only to the debts of the deceased and do not have reference to debts of the beneficiary in said policy. Act 102 clearly sets forth and refers only to the person who took out the insurance, who pays the premiums thereon. That fact is clearly shown because said act states that the holder [fol. 26] of said policy after the passage of Act 102 still has the right to assign, mortgage, pledge or hypothecate any policy of insurance on which he is paying premiums. Said act in no way refers to the case at bar where the judgment is against the beneficiary under the policy and not against the person who took out the policy and paid the premiums thereon during his life time.

Your petitioner further states that section 3 of Act 102 of the Acts of 1933 shows clearly that said act refers to the debts of the person who takes out the policy and not to the debts of the beneficiary thereunder. A part of section 3 which shows that fact clearly, reads as follows: "It is ascertained and hereby declared that the vast majority of those now holding insurance policies are compelled, owing to the desperate financial situation now existing, to make every possible sacrifice in order to maintain their policies in force for the benefit of themselves and their families, and that in most instances whatever rights they hold in said policies constitute their entire resources."

Wherefore, plaintiff, W. B. Worthen Company, Agent, prays that the motion to dismiss be stricken and for naught held, and that an order issue from this court directing B. T. Hoff, Circuit Clerk and Recorder of Pulaski County, Arkansas, to pay to the plaintiff herein out of the proceeds of the $2,000 paid into the registry of the court by the Missouri State Life Insurance Company the sum of $1,211.40 plus [fols. 27-29] interest thereon at the rate of 6% per annum from August 31, 1932, until paid, plus all its costs herein expended and for all other proper relief.

Murphy & Murphy, Attorneys for Plaintiff.

[fol. 30] IN CIRCUIT COURT OF PULASKI COUNTY

W. B. WORTHEN COMPANY, Agent, Plaintiff,

v.

RALPH THOMAS and MRS. W. D. THOMAS, Trading as Enterprise Harness Company, Defendants; Missouri State Life Insurance Company, Garnishee

JUDGMENT—May 12, 1933

On this day comes the plaintiff by its attorneys, Murphy & Murphy, and comes the defendant, Mrs. W. D. Thomas (or Van C.) Thomas, by her attorney, Harry Robinson, Esq., and this cause now coming on to be heard upon the motion of said defendant to dismiss the garnishment herein, and upon her schedule of exemptions of the proceeds of an insurance policy, she being the beneficiary under a policy of life insurance upon the life of W. D. Thomas, deceased, issued by the garnishee, Missouri State Life Insurance Company; whereupon, said motion and schedule are submitted to the Court after argument of counsel; and it appears to the court that under order of this court entered herein on the 7th day of April, 1933, the garnishee, Missouri State Life Insurance Company, paid into the registry of this Court the sum of $2,000.00 and was released from further answer or liability herein as garnishee, which said sum of $2,000.00 is being held in the registry of the court subject to the further orders of the court in this action; and the court, being well and sufficiently advised as to all matters of law and fact arising herein, doth find that said sum of money is exempt from liability or seizure under any judicial process of any court, and doth grant said motion and schedule;

[fol. 31] It is, therefore, considered, ordered and adjudged by the court that the said sum of $2,000.00 be and the same is hereby released from liability or seizure under the garnishment proceedings herein; and the clerk of this court is hereby directed to pay over said sum of $2,000 to the defendant, Mrs. W. D. (or Van C.) Thomas, or her attorney of record, taking receipt therefor upon the margin of the record hereof;

To which action of the court in granting said motion and schedule the plaintiff at the time excepted and asked that

its exception be noted of record, which is hereby accordingly done;

Thereupon plaintiff prayed an appeal to the Supreme Court of Arkansas, which was granted; and plaintiff is allowed ten days' time within which to file its supersedeas bond herein.

[fols. 32–36] Supersedeas bond on appeal, approved and filed May 18, 1933, omitted in printing.

[fol. 37] IN SUPREME COURT OF ARKANSAS

3192

W. B. WORTHEN COMPANY, Agent, Appellant,

v.

MRS. W. W. THOMAS, Appellee

Appeal from Pulaski Circuit Court, Second Division

JUDGMENT—NOV. 27, 1933

This cause came on to be heard upon the transcript of record of the circuit court of Pulaski County, Second Division, and was argued by counsel, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the Court that the judgment of said circuit court in this cause rendered be, and the same is hereby in all things affirmed with costs.

It is further considered that said appellee recover of said appellant and George G. Worthen and Mollie P. Worthen, sureties in the supersedeas bond filed in this cause, all her costs in this Court and the court below, in this cause expended, and have execution thereof. Opinion by Kirby, J.; Mehaffey, J., dissents.

[fol. 38] IN SUPREME COURT OF ARKANSAS

W. B. WORTHEN COMPANY, Agent,

v.

THOMAS

OPINION—November 27, 1933

Statement by the Court

Appellant, W. B. Worthen Co., Agent, plaintiff below, procured judgment in personam against one Ralph Thomas and Mrs. W. D. Thomas, known also as Van Cleve Thomas, appellee herein, doing business as co-partners under the firm name and style of Enterprise Harness Company, based upon personal service of summons upon each of said defendants, in the Pulaski Circuit Court, Second Division, on August 31, 1932, in the sum of $1200 with interest thereon at 6% per annum from July 5, 1932, until paid and costs. The judgment was not appealed from and remains in full force.

Pursuant to said judgment the appellant caused writs of garnishment with allegations and interrogatories to be served upon certain persons, naming them, who answered denying having any property belonging to either Ralph Thomas or Mrs. W. D. Thomas, and stating further that they were not indebted to them, or either of them, in any amount.

That appellant caused a writ of garnishment based upon the judgment aforesaid with allegations and interrogatories to be served upon the Missouri State Life Insurance Company by the sheriff of Pulaski County by delivering same to U. A. Gentry, State Insurance Commissioner, the agent designed by said garnishee for service of process upon it in Pulaski County, wherein appellant alleged that said garnishee had in its hands and possession $5,000 belonging to appellee as shown by the sheriff's return.

[fol. 39] The Legislature enacted Act 102 at its 1933 session, the title and first section of which reads as follows:

Act 102

"An Act to Extend the Exemption Laws of This State"

Be it enacted by the general assembly of the State of Arkansas:

"Section 1. All moneys paid or payable to any resident of this State as the insured or beneficiary designated under any insurance policy or policies providing for the payment of life, sick, accident and/or disability benefits shall be exempt from liability or seizure under judicial process of any court, and shall not be subjected to the payment of any debt by contract or otherwise by any writ, order, judgment or decree of any court, provided, that the validity of any sale, assignment, mortgage, pledge or hypothecation of any policy of insurance or if any avails, proceeds or benefits thereof, now made, or hereafter made, shall in no way be affected by the provisions of this act." Approved: March 16, 1933."

Appellee filed a motion to dismiss the writ of garnishment against the life insurance company issued and served on March 10, 1933, and for the further purpose of scheduling a certain sum of money owed her by the aforesaid insurance company as exempt from garnishment or seizure under the provisions of Act 102 of 1933, which she alleged exempted the money due her from garnishment or seizure under the judicial process of any court.

On April 6, 1933, the insurance company answered the garnishment stating that it had issued theretofore to W. D. [fol. 40] Thomas its policy No. 86800 in the amount of $5,000; "that appellee herein, Mrs. W. D. Thomas, known also as Van Cleve Thomas, was designated as beneficiary therein, and that she had made claim on it for the proceeds of said policy. That by reason of certain accumulations on said policy that it admitted an indebtedness thereunder in the amount of five thousand fifty-seven and 80/100 dollars ($5057.80), and that it was ready to pay this amount to said beneficiary when authorized to do so by an order of the Pulaski Circuit Court."

It stated further: "that by the provisions of Act 102, enacted by the General Assembly of the State of Arkansas, at its 1933 session, all moneys payable to any resident of this State under a policy of insurance are exempt and not subject to seizure under judicial process of any court. That appellee was then a resident of this State," and prayed the court to enter an order discharging it of all liability to appellant, and that it be authorized to pay the proceeds of the policy to appellee.

On April 7, 1933, the court upon a petition of appellee found that $2,000 was a sufficient amount to satisfy any claim or judgment that appellant could have against any of the funds held by the insurance company, and ordered upon the payment of that amount into the registry of the court by it, that said company should be discharged from any liability arising from the writ of garnishment and that it be discharged with its costs.

On April 20, 1933, appellant filed its response to the motion to dismiss the writ of garnishment, and on April 29, it filed [fol. 41] an amendment thereto in which it resisted the aforesaid motion to dismiss, challenging Act 102 of 1933 as unconstitutional and void.

On the hearing the court found that the insurance company had paid $2,000 into the registry of the court pursuant to its order and was discharged from further liability as garnishee, which was held subject to further order of the court, and that said sum of money was exempt from liability or seizure under any judicial process of any court and granted said motion and schedule. Ordered that the money paid into court be released from liability under the garnishment and ordered the clerk to pay over the money to Mrs. W. D. Thomas, or her attorney of record, taking a receipt therefor on the margin of the record. Appellant excepted to the court's action in granting the motion and schedule and prayed an appeal to the Supreme Court.

KIRBY, J. (after stating the facts):

The only question for determination here is the constitutionality of act 102 of 1933, approved March 16, 1933.

It is insisted that said act is violative of section 10, article 1 of the Constitution of the United States as impairing the obligations of a contract, and section 17 of article 2 of the Constitution of Arkansas.

In Acree v. Whitley, 136 Ark. 149, 206 S. W. 137, it was said: "It may be stated at the outset that section 21 does not relate to the absolute exemption of personal property allowed a resident of this State as exempt from certain debts and liabilities under sections 1 and 2 of article 9 of [fol. 42] our constitution. The reason is, beneficiaries in insurance policies, as well as other persons, are obliged to pay judgments against them in favor of third persons and exemptions from execution and other process of the court

are fixed by the sections of the Constitution above referred to. The statute in question was not enacted for the purpose of allowing beneficiaries exemptions which they are not entitled to under the Constitution and laws of this State, but the act was passed for the purpose of exempting these funds from the operation of our general statutes regulating issuance of garnishments and proceedings thereunder."

It is true this act is broader in its terms than the one construed in the above case, since it exempts all moneys payable to any resident of the State: "as the insured or beneficiary designated under any insurance policy or policies providing for the payment of life, etc. * * * from liability or seizure under judicial process of any court, and shall not be subject to the payment of any debt by contract or otherwise by any writ, order, judgment or decree of any court, * * * provided that the validity of any sale, mortgage, or hypothecation of any policy of insurance, etc., shall in no way be affected by the provisions of this act."

As said by this court of the other statute, it can well be said of this statute, Act 102 of 1933, that it "does not relate to the absolute exemption of personal property allowed a resident of this State as exempt from certain debts and [fol. 43] liabilities under sections 1 and 2 of Article 9 of our Constitution. * * * was not enacted for the purpose of allowing beneficiaries exemptions which they are not entitled to under the constitution and laws of this state, but the act was passed for the purpose of exempting these funds from the operation of our general statutes regulating issuance of garnishments and proceedings thereunder."

This could be done without violation of our constitution. No creditor has the right to any particular remedy and such statutes prohibit only the issuance of garnishments against such funds as already held by our court; and neither does it violate the constitution of the United States in impairing the obligations of a contract by prohibiting the use of certain procedure in subjecting certain insurance funds to the payment of a judgment against the beneficiary in an insurance policy * * * funds that were not in existence when the judgment was obtained and were allowed to be provided for by the insured whom the law allows to expend a certain amount of money to provide insurance for the benefit of his wife.

The law allows the equities in cases to be considered in the construction of the statutes relating to the subject in question. Evans-Snider-Buel Co. v. McFadden, 58 L. R. A. 900.

The judgment is affirmed.

Mehaffy, J. dissents.

[fol. 44] IN SUPREME COURT OF ARKANSAS

W. B. WORTHEN COMPANY, Agent, Appellant,

vs.

MRS. W. D. THOMAS, Appellee

PETITION OF APPELLANT FOR REHEARING—Filed Dec. 13, 1933

The Appellant, W. B. Worthen Company, Agent, petitions the court to grant a new hearing in the above styled cause for the reasons hereinafter set forth.

Assignments of Error

That Act 102, approved March 16, 1933, is clearly violative of the following constitutional provisions: Section 10 of Article 1 of the Constitution of the United States and section 17 of Article 2 of the Constitution of Arkansas, which alike provide that no law impairing the obligation of contracts shall ever be passed. Secton 4 of Article 4 of the Constitution of the United States, which provides that the United States shall guarantee to every State in this Union a Republican form of government. The 5th Article of Amendment to the Constitution of the United States which provides that no person shall be deprived of life, liberty, or property, without due process of law. Section 1 of the 14th Article of Amendment to the Constitution of the United States which declares that no State shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. Sections 1 and 2 of Article 9 of the Constitution of Arkansas which declare with reference to [fol. 45] exemptions, that personal property of any resident

of this State, in specific articles to be selected by such resident, not exceeding in value the sum of $200 with respect to one not married or the head of a family or $500 as to one who is married or the head of a family, additionally to the wearing apparel of such person and his or her family, shall be exempt from seizure on attachment, or sale on execution, or other process from any court on debt by contract.

3. The opinion of the court is erroneous as a matter of law in that it ignores the elementary principle of law that the remedy in force at the time and place of making a contract is an integral part thereof as fully to all intents and purposes as though incorporated therein by express language.

[fol. 46] 8. This court erred as a matter of law by upholding as valid a legislative enactment, retrospective in its character and operation, which has directly destroyed vested property rights and appellant's only efficacious remedy, without providing any substitute remedy that is substantial and efficient.

Wherefore, appellant prays that this cause be re-heard and that judgment of the trial court be reversed in conformance with the relief prayed for by the appellant in the original hearing hereof.

Francis T. Murphy, Eugene H. Murphy, Counsel for Petitioner.

[File endorsement omitted.]

[fol. 47] IN SUPREME COURT OF ARKANSAS

ORDER OVERRULING PETITION FOR REHEARING—January 8, 1934

Being fully advised, the petitions for rehearing in the following causes are by the court severally overruled, viz:

* * * * * * *

3192

W. B. WORTHEN COMPANY, Agent,

v.

MRS. W. D. THOMAS

* * * * * * *

[fol. 48] Clerk's Certificate to transcript omitted in printing.

[fol. 49] IN SUPREME COURT OF ARKANSAS

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL, ASSIGNMENT AND PRAYER—Filed Feb. 9, 1934

Considering themselves aggrieved by the final decision of the Supreme Court of the State of Arkansas in rendering judgment herein against them in the above entitled case, the appellants W. B. Worthen Company, Agent, George G. Worthen, and Mollie P. Worthen, hereby pray an allowance of appeal from the said decision and judgment to the United States Supreme Court, and an order fixing the amount of a supersedeas bond.

The said appellants assign the following errors in the records and proceedings in the said case:

1. The Supreme Court of Arkansas erred in depriving the appellant W. B. Worthen Company, Agent of all substantial remedy for the collection of its judgment by process of garnishment, which remedy was in existence under the laws of the State of Arkansas at the time the debt, which is the basis of appellant's judgment herein, was contracted and was in existence at the time the judgment was rendered and at the time the writ of garnishment issued and the lien thereof attached and at the time said Act 102 was adopted by the Arkansas General Assembly. The judgment of the court deprives appellant W. B. Worthen Company, Agent, of all effectual remedy and leaves it with no means to collect its judgment from the fund arising from said policy of insurance.

2. The Supreme Court of Arkansas erred in holding that Act 102 of the General Assembly of the State of Arkansas adopted March 16, 1933, is valid as applied to said appellant's rights in this cause. The court erred in holding that the act is valid in its provision that all proceeds of life, [fol. 50] sick, accident or disability benefit policies shall be

exempt from liability or seizure under judicial process of any court and shall not be subjected to the payment of any debt by contract or otherwise by any writ, judgment or decree of any court.

3. The Supreme Court of Arkansas erred in vacating the garnishment which said appellant had sued out and by which it had obtained a lien upon the proceeds of life insurance policy payable to appellee who is indebted to appellant W. B. Worthen Company, Agent, upon a judgment in this cause for the payment of money, such writ of garnishment having duly issued and a lien thereunder attached before the adoption of Act 102 named above.

4. The Supreme Court of Arkansas erred in holding that the proceeds of a life insurance policy payable to such judgment debtor upon a judgment obtained before the adoption of such act is exempt from garnishment or any other judicial process.

5. The Supreme Court of Arkansas erred in holding that appellant W. B. Worthen Company, Agent, a judgment creditor of appellee before the adoption of said Act 102, is without the remedy of judicial process to enforce payment by appellee from the proceeds of the policy of life insurance payable to appellee before the adoption of said Act 102.

6. The Supreme Court of Arkansas erred in holding that said Act 102 as applied in this cause does not impair the obligation of contracts, contrary to the provisions of the Constitution of the United States, Article 1, Section 10.

7. The Supreme Court of Arkansas erred in holding that Act 102 does not abridge the privileges and immunities of appellant W. B. Worthen Company, Agent, as guaranteed by the Fourteenth Amendment of the Constitution of the United States, and that it does not deprive said appellant of its property without due process of law contrary to the provisions of said amendment.

For which errors the appellants, W. B. Worthen Com-
[fol. 51] pany, Agent, George G. Worthen, and Mollie P. Worthen, pray that the said judgment of the Supreme Court of the State of Arkansas dated November 27, 1933, be

reversed and a judgment rendered in favor of these appellants, and for costs.

W. B. Worthen Company, Agent; George G. Worthen, Mollie P. Worthen, by Henry M. Armistead, Eugene H. Murphy, Francis T. Murphy, Attorneys for Appellants.

[File endorsement omitted.]

[fol. 52] IN SUPREME COURT OF ARKANSAS

[Title omitted]

ORDER ALLOWING APPEAL—Filed Feb. 9, 1934

The appeal herein petitioned for is allowed and ordered upon the execution of a bond by the appellants to Mrs. W. D. Thomas in the sum of $3,000, such bond when approved to act as a supersedeas.

C. E. Johnson, Chief Justice, Supreme Court of Arkansas. (Seal of the Supreme Court of Arkansas.)

[File endorsement omitted.]

[fols. 53–60] Supersedeas Bond on Appeal for $3,000, approved and filed Feb. 9, 1934, omitted in printing.

[fols. 61-69] Citation in usual form showing service on Mrs. W. D. Thomas, filed Feb. 9, 1934, omitted in printing.

[fol. 70] Certificate of lodgment omitted in printing.

[fol. 71] Return to Allowance of Appeal omitted in printing.

[fol. 72] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF APPELLANTS OF THE POINTS ON WHICH THEY INTEND TO RELY (RULE 13, PAR. 9), AND STIPULATION AS TO PRINTING RECORD—Filed March 12, 1934

Statement of the points upon which Appellants rely for a reversal:

Act 102 of the Acts of Arkansas, Forty-Ninth General Assembly, 1933, as construed by the Supreme Court of Arkansas in this case, is given an unconstitutional retrospective effect, vacating appellant W. B. Worthen Company, Agent's vested right in a garnishment lien, destroying all remedies and impairing the obligation of its contract, which was the foundation of the judgment, in violation of the United States Constitution, Article 1, Section 10 and the due process provisions of the Fourteenth amendment thereto.

These claims of appellant are set forth in the assignment of errors on this appeal in seven paragraphs (Tr. 49-51), which are somewhat repetitious but are summed up in paragraphs 1, 6, and 7 as follows:

"1. The Supreme Court of Arkansas erred in depriving the appellant W. B. Worthen Company, Agent, of all substantial remedy for the collection of its judgment by process of garnishment, which remedy was in existence under the laws of the State of Arkansas at the time the debt, which is the basis of appellant's judgment herein, was contracted and was in existence at the time the judgment was rendered and at the time the writ of garnishment issued and the lien thereof attached and at the time said Act 102 was adopted by the Arkansas General Assembly. The judgment of the court deprives appellant W, B. Worthen Company, Agent, of all effectual remedy and leaves it with no means to collect its judgment from the fund arising from said policy of insurance.

[fols. 73 & 74] "6. The Supreme Court of Arkansas erred in holding that said Act 102 as applied in this cause does not impair the obligation of contracts, contrary to the provisions of the Constitution of the United States, Article 1, Section 10.

"7. The Supreme Court of Arkansas erred in holding that Act 102 does not abridge the privileges and immunities of appellant W. B. Worthen Company, Agent, as guaranteed by the Fourteenth Amendment of the Constitution of the United States, and that it does not deprive said appellant of its property without due process of law contrary to the provisions of said amendment."

Respectfully submitted, Henry M. Armistead, Eugene H. Murphy, Francis T. Murphy, Attorneys for Appellants.

Little Rock, Arkansas;
March 8, 1934.

The undersigned, counsel for appellee Mrs. W. D. Thomas, hereby acknowledge service for the appellee of the foregoing statement of the appellants of the points on which they intend to rely.

Fred A. Isgrig, Kenneth W. Coulter, Harry Robinson, Attorneys for Appellee.

[fol. 75] STIPULATION OF PARTS OF RECORD TO BE PRINTED
(RULE 13, PARAGRAPHS 2 & 9)

Stipulation of the parties:

It is stipulated and agreed by and between Henry M. Armistead, counsel for the appellant, and Kenneth W. Coulter, Fred A. Isgrig and Harry Robinson, counsel for appellee, that the following portions of the record are designated under Rule 13, Paragraphs 2 and 9, to be printed:

Complaint in the Pulaski Circuit Court and exhibit (Tr. 4-6).

Garnishment Bond in the Pulaski Circuit Court (Tr. 7-8).

Judgment in the Pulaski Circuit Court (Tr. 9-10).

Order of Pulaski Circuit Court noting filing of allegations and interrogatories for garnishment and garnishment allegations and interrogatories (Tr. 11-12).

Writ of Garnishment and Return thereon (Tr. 13-14).

Motion to dismiss Writ of Garnishment (Tr. 16-18).

Answer of Garnishee (Tr. 19-20).

Response to Motion for Dismissal of Garnishment (Tr. 22-27).

Judgment of the Pulaski Circuit Court dismissing the writ of garnishment (Tr. 30-31).

Supersedeas Bond on Appeal to the Supreme Court of Arkansas (Tr. 32-34).

Opinion and judgment of the Supreme Court of Arkansas (Tr. 37-43).

Paragraphs Nos. 1, 3 and 8 of petition of appellant for rehearing in the Supreme Court of Arkansas (Tr. 44-45) and its filing date (Tr. 47).

Order Overruling Petition for Rehearing in the Supreme Court of Arkansas with date (Tr. 47).

Certificate of clerk of the Supreme Court of Arkansas (Tr. 48).

Petition for allowance of appeal, assignment of errors, and prayer for reversal to the Supreme Court of the United States (Tr. 49-51).

Allowance of appeal and date (Tr. 52).

[fols. 76 & 77] Supersedeas Bond on appeal with approval and date (Tr. 53-54).

Statement as to jurisdiction on appeal with acknowledgment of service and date (Tr. 55-60).

Acknowledgment of service of petition for appeal, order allowing appeal, assignments of error, statement as to jurisdiction and præcipe (Tr. 60).

Citation and acknowledgment of service and appellee's entry of appearance in the Supreme Court of the United States (Tr. 61).

Statement in denial of jurisdiction with date (Tr. 62-67).

Appellee's motion to dismiss or affirm with date (Tr. 68).

Acknowledgment of service of statement in denial of jurisdiction with date (Tr. 69).

Certificate of the clerk of the Supreme Court of Arkansas and return to allowance of appeal (Tr. 70-71).

It is further stipulated and agreed that, if from oversight or omission, any necessary part of the record be not thus printed, the appellant has the right to print, or may

be required by appellee to print, any further or additional portions thereof.

Dated March 1, 1934.

Henry M. Armistead, Counsel for Appellant. Kenneth W. Coulter, Fred A. Isgrig, Harry Robinson, Counsel for Appellee.

[fol. 78] [File endorsement omitted.]

Endorsed on cover: File No. 38,459. Arkansas Supreme Court. Term No. 856. W. B. Worthen Company, Agent, George G. Worthen and Mollie P. Worthen, Appellants, vs. Mrs. W. D. Thomas. Filed March 12, 1934. File No. 856, O. T., 1933.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933.

No. 856

W. B. WORTHEN COMPANY, AGENT, GEORGE G. WORTHEN AND MOLLIE P. WORTHEN,

Appellants,

vs.

MRS. W. D. THOMAS.

STATEMENT AS TO JURISDICTION ON APPEAL.

The appellants, in support of the jurisdiction of this Court to review the above entitled cause on appeal, respectfully state:

(a) This is an appeal from a judgment of the Supreme Court of Arkansas taken under the provisions of the United States Code, Title 28, Section 344 (Judicial Code, Section 237), Paragraph (a) and Amendments, and involves the validity under the Constitution of the United States of an act adopted by the General Assembly of the State of Arkansas, approved March 16, 1933, numbered Act 102.

(b) Said Act is here set forth *in extenso*, to wit:

ACT 102.

"AN ACT TO EXTEND THE EXEMPTION LAWS OF THIS STATE."

"Be it enacted by the General Assembly of the State of Arkansas:

"SECTION 1. All moneys paid or payable to any resident of this State as the insured or beneficiary designated under any insurance policy or policies providing for the payment of life, sick, accident and/or disability benefits shall be exempt from liability or seizure under judicial process of any court, and shall not be subjected to the payment of any debt by contract or otherwise by any writ, order, judgment or decree of any court, provided, that the validity of any sale, assignment, mortgage, pledge or hypothecation of any policy of insurance or if any avails, proceeds or benefits thereof, now made, or hereafter made, shall in no way be affected by the provisions of this act.

"SECTION 2. All laws and parts of laws in conflict herewith are hereby repealed, provided however, that nothing in this act shall be construed to repeal, modify or alter the provisions of Acts 76 and 141 of the Acts of the General Assembly of 1931.

"SECTION 3. It is ascertained and hereby declared that the vast majority of those now holding insurance policies are compelled, owing to the desperate financial situation now existing, to make every possible sacrifice in order to maintain their policies in force for the benefit of themselves and their families, and that in most instances whatever rights they hold in said policies constitute their entire resources, and to be deprived of the same will seriously affect the well being of a great number of the citizens of this State who would thereby be reduced to the position of becoming public charges to the great harm and detriment of the entire State, an emergency is hereby declared to exist,

and this Act shall be in full force and effect from and after its passage.

"Approved March 16th, 1933."

Acts of Arkansas, Forty-ninth General Assembly, 1933, page 321.

(c) This case was decided by the Supreme Court of Arkansas November 27, 1933, and petition for rehearing was overruled January 8, 1934, the Supreme Court judgment then becoming final, and this application for appeal was presented to the Chief Justice of the Arkansas Supreme Court February 9, 1934.

(d) Appellant W. B. Worthen Company, agent, recovered a judgment against appellee upon contract in the Circuit Court of Pulaski County, Arkansas, in the sum of twelve hundred eleven and 40/100 dollars ($1,211.40), with interest and costs, on the 31st day of August, 1932, and on the 10th day of March, 1933, there issued from that court a writ of garnishment directed to and which was served upon Missouri State Life Insurance Company, a life insurance company which then owed appellee, the judgment debtor, the sum of $5,057.80 upon a life insurance policy. The writ of garnishment was served upon the insurance company on the 10th of March, 1933, and under the Arkansas laws became a lien on the credit from that date. April 5, 1933, appellee filed a motion in writing in the circuit court to dismiss the writ of garnishment, stating the facts as to the judgment and the issuance of the writ and that the Life Insurance Company is indebted to her in the sum of the policy, $5,057.80, she being beneficiary in the policy, which was upon the life of her husband who died March 5, 1933, and that under the law such sum is exempt from liability or seizure under any judicial process of any court and is not subject to payment of any debt by contract by any writ, order, judgment or decree of any court and claiming the

sum as exempt from garnishment, seizure or attachment and asking that it be released from the lien of the writ. On the same day the insurance company filed its answer to the writ, pleading that by the provisions of Act 102 of the General Assembly of the State of Arkansas, adopted at its 1933 session, all moneys payable to any resident of the State under policies of insurance are exempt and not subject to seizure under any judicial process, and asking to be discharged from the writ and authorized to pay the proceeds to appellee. April 7th the circuit court entered an order releasing all of the proceeds of the policy except $2,000.00, which it ordered to be paid into the registry of the court, which was done.

Appellant W. B. Worthen Company, agent, filed its response to appellee's motion April 20, 1933, stating the fact of the rendition of the judgment; that an execution had been issued thereon and had been returned unsatisfied. That the writ of garnishment had issued on March 10, 1933, being served and the appellant thereby obtained a lien on said sum under the law of the State of Arkansas from the date of service, which was March 10, 1933. That there has always been under the law of Arkansas a right to a writ of garnishment and such lien could not lawfully be released or dissolved by the adoption of Act 102 on the 16th of March, 1933. That it is not intended that Act 102 should have an effect on actions then pending, and that if it should be held to have effect of dissolving garnishment in this case, the appellant's rights under Article 1, Section 10 of the United States Constitution are impaired, and asking that the motion be denied, and for an order upon the clerk of the court to pay the judgment from the proceeds of the sum held in the registry of the court. May 12, 1933, the circuit court entered a judgment allowing appellee's claim of exemptions on the ground that the proceeds of the policy were exempt from liability or seizure from any judicial

process of any court and granted appellee's motion to dismiss and dissolve the garnishment and release the lien thereof, and directed that the sum in the registry of the court be paid to appellee.

Appeal to the Supreme Court of Arkansas was taken, judgment in the circuit court was superseded, appellants George G. Worthen and Mollie P. Worthen becoming sureties upon such supersedeas bond, and on November 27, 1933, the Supreme Court of Arkansas affirmed the judgment of the circuit court, holding that the act was valid and that no judicial process is available to the appellant W. B. Worthen Company, agent, to collect its judgment from the proceeds of the insurance policy, and entered judgment against all three of these appellants for costs.

A petition for rehearing was denied January 8, 1934. In its brief to the Supreme Court of Arkansas, appellant W. B. Worthen Company, agent, set up its claims that the act violates the United States Constitution, impairing the obligations of contract and denying due process of law and equal protection of the laws, and this claim was repeated on the petition for rehearing.

To sustain the jurisdiction of this Court and to reverse this cause, appellants rely on the following cases:

Arthur Bronson v. *John H. Kinzie*, 1 Howard 311;
Gunn v. *Barry*, 15 Wall. 610;
Edwards v. *Kearzey*, 96 U. S. 595;
Memphis v. *United States*, 97 U. S. 293;
Antoni v. *Greenhaw*, 107 U. S. 798;
Conn. Mutual Life Ins. Co. v. *Cushman*, 108 U. S. 65;
Port of Mobile v. *United States*, 116 U. S. 305;
Seibert v. *United States*, 122 U. S. 294;
McGahey v. *Virginia*, 135 U. S. 694;
Louisiana v. *New Orleans*, 215 U. S. 178.
Kuhn v. *Fairmont Coal Co.*, 215 U. S. 369;

Northern Pacific Railway Co. v. *Wall*, 241 U. S. 91;
Bank of Minden v. *Clement*, 256 U. S. 126;
Shwab v. *Doyle*, 258 U. S. 534;
Hardware Dealers' Mutual Fire Ins. Co. v. *Glidden Company*, 284 U. S. 151.

It is, therefore, respectfully submitted that this Court has jurisdiction to hear and determine this appeal.

W. B. WORTHEN COMPANY,
Agent,
GEORGE G. WORTHEN,
MOLLIE P. WORTHEN,
By HENRY M. ARMISTEAD,
EUGENE H. MURPHY,
FRANCIS T. MURPHY,
Attorneys for Appellants.

FILE COPY

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

W. B. WORTHEN COMPANY, AGENT, GEORGE G. WORTHEN AND MOLLIE P. WORTHEN ..... *Appellants,*

v. No. 856

MRS. W. D. THOMAS ..... *Appellee.*

APPELLANTS' BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS OR AFFIRM AND IN ANSWER TO STATEMENT AGAINST JURISDICTION

HENRY M. ARMISTEAD,
EUGENE H. MURPHY,
FRANCIS T. MURPHY,
Attorneys for Appellants.

DEMOCRAT P. & L. CO., LITTLE ROCK

BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS OR AFFIRM AND IN ANSWER TO STATEMENT AGAINST JURISDICTION

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(d) IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

W. B. WORTHEN COMPANY, AGENT, GEORGE G. WORTHEN AND MOLLIE P. WORTHEN ..... *Appellants,*

v. No. .....

MRS. W. D. THOMAS ..... *Appellee.*

APPELLANTS' BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS OR AFFIRM AND IN ANSWER TO STATEMENT AGAINST JURISDICTION

STATEMENT OF THE CASE

This appeal questions the validity of an act of the Arkansas Legislature adopted March 16, 1933 (as applied to an antecedent debt action) which exempts all proceeds of life insurance policies payable to any resident of the state from seizure upon any judicial process of any court. (Acts of Arkansas, 49th General Assembly, 1933, Act 102, page 321. The act is published in full in an appendix to this brief, page 24). This appeal is taken under the provisions of United States Code, Title 28, Section 344, Judicial Code, Section 237, and amendments, and the point was raised and maintained at all stages below that the statute and as construed by the Arkansas courts impairs the valid-

ity of a contract, and the protection of the appropriate provisions of the United States Constitution was specifically invoked (Tr., 22, 25, 41, 44-46).

Appellant, W. B. Worthen Company, Agent, recovered a judgment in the amount of $1,200 against appellee for the payment of money upon a contract in the Circuit Court of Pulaski County, Arkansas, August 31, 1932 (Tr. 9-10. The other appellants are supersedeas sureties upon the appeal to the Arkansas Supreme Court and judgment was rendered there against them for costs.) Upon allegations filed in circuit court by appellant, W. B. Worthen Company, Agent, a writ of garnishment issued directed to a life insurance company which owed appellee $5,000 as the proceeds of a policy upon the life of her husband (Tr. 11-12; 16-17), who died March 5, 1933 (Tr. 16-17, 30). The writ was served March 10, 1933 (Tr. 13-14). Under the statutes of Arkansas, as construed by its Supreme Court, such a writ, upon its service, becomes a lien (Crawford & Moses' Digest, Arkansas Statutes, 1921, Sec. 4906; *Smith* v. *Butler*, 72 Ark. 350; *St. Louis Southwestern Ry. Co.* v. *Vanderberg*, 91 Ark. 252). March 16, 1933, the General Assembly of the State of Arkansas adopted Act 102 exempting the proceeds of life insurance policies from judicial process. The act provides:

> "Section 1. All monies paid or payable to any resident of this state as the insured or beneficiary designated under any insurance policy or policies providing for the payment of life, sick, accident and/or disability benefits shall be exempt from liability or seizure under judicial process of any court, and shall not be subjected to the payment of any debt by contract or otherwise by any writ, order, judgment or decree of any court * * *.
>
> "Section 2. Repeals all conflicting laws except Acts 76 and 141 of the Acts of the General Assembly,

1931. (Act 76 of the Acts of Arkansas, 1931, p. 214, exempts the proceeds of all life insurance payable to a person other than himself from the debts of the insured; Act 141 of the Acts of Arkansas, 1931, p. 378, provides that married women may insure the lives of their husbands and the proceeds shall be free from the debts of the insured).

"Section 3. It is ascertained and hereby declared that the vast majority of those now holding insurance policies are compelled, owing to the desperate financial situation now existing, to make every possible sacrifice in order to maintain their policies in force for the benefit of themselves and their families, and that in most instances whatever rights they hold in said policies constitute their entire resources, and to be deprived of the same will seriously affect the well being of a great number of the citizens of this state who would thereby be reduced to the position of becoming public charges to the great harm and detriment of the entire state, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage."

(See appendix to this brief, page 24, for full copy of the act, also it is set forth *in extenso* in appellant's jurisdictional statement, Tr. 55-56.)

Upon motion of appellee and the garnished insurance company, the Pulaski Circuit Court dismissed the writ of garnishment (Tr. 30-31). Appellant, W. B. Worthen Company, Agent, opposed the dismissal, pleading that the statute and such action of the court would impair the obligation of the contract which was the foundation of its judgment, and destroy its vested rights, and invoking Article 1, Section 10, of the Constitution of the United States (Tr. 22-25). An appeal was taken to the Supreme Court of Arkansas. The judgment of the circuit court was superseded.

George G. Worthen and Mollie P. Worthen being sureties on the supersedeas bond (Tr. 32-33). On November 27, 1933, the Supreme Court of Arkansas affirmed the action of the circuit court, construing the statute as being valid and specifically deciding the United States constitutional question involved against appellants' claim and entered a judgment against all three of these appellants for costs (Tr. 37-43. See *W. B. Worthen Co.* v. *Thomas,* Vol. 52, No. 10, Arkansas Law Reporter, page 547; S. C. 65 S. W. (2d), page 917. The opinion has not been officially printed; a full copy is published in the appendix to this brief, pages 23-29). This appeal was allowed February 9, 1934, by the chief justice of the Arkansas Supreme Court (Tr. 52), and the judgment of the Supreme Court of Arkansas superseded (Tr. 53-54). Appellee filed in due time under the rules of this court her motion to dismiss or affirm the appeal, and statement in denial of jurisdiction (Tr. 62-68). The motion to affirm states that it is manifest that the appeal was taken for delay only, and that the jurisdictional question upon which the appeal is founded is frivolous (Tr. 68). The jurisdictional question under the Constitution of the United States was raised in the Pulaski Circuit Court on the appellant, W. B. Worthen Company, Agent's, response to the appellee's and insurance company's motions to dismiss the writ of garnishment, in these words:

> "If said Act 102 (referring to the Act of the Arkansas Legislature adopted March 16, 1933) were to cancel and set aside liens and rights of parties which were in effect at the time of its passage, thus reaching back to set aside rights then in effect, it would be a violation of Article 1, Section 10, of the Constitution of the United States which provides that no state shall pass any law impairing the obligations of contracts" (Tr. 25).

This objection was renewed in the Supreme Court of Arkansas by appellant, W. B. Worthen Company, Agent, as is shown by this statement contained in that court's opinion in this case, delivered November 27, 1933:

> "The only question for determination here is the constitutionality of Act 102 of 1933, approved March 16, 1933. It is insisted that said act is violative of section 10, article 1, of the Constitution of the United States as impairing the obligations of a contract. * * * No creditor has the right to any particular remedy and such statutes prohibit only the issuance of garnishments against such funds as already held by our court; and neither does it violate the Constitution of the United States in impairing obligations of a contract by prohibiting the use of certain procedure in subjecting certain insurance funds to the payment of a judgment against the beneficiary in an insurance policy. * * * The judgment is affirmed." (Tr. 41-43; also appendix to this brief, pages 23 to 29).

On petition for rehearing, filed December 13, 1933, in the Supreme Court of Arkansas, appellant, W. B. Worthen Company, Agent, renewed its claim that the act as construed violates its right of contract as assured by the Constitution of the United States (Tr. 44), and also raised the question that due process of law was denied as assured by the Fourteenth Amendment (Tr. 44). This petition for rehearing was overruled January 8, 1934 (Tr. 47). On February 9, 1934, the appellants filed in the Supreme Court of Arkansas petition for allowance of appeal, assignment of errors (Tr. 49-51), jurisdictional statement (Tr. 55-59), prayer for reversal (Tr. 51) and praecipe (Tr. 2-3). The appeal was allowed by the chief justice of the Supreme Court (Tr. 52), supersedeas bond filed and approved (Tr. 53-54), citation issued (Tr. 61), and petition for appeal, order allowing appeal,

assignment of errors, statement as to jurisdiction, praecipe, and citation were served on the same day (Tr. 60). The assignment of errors states:

"1. The Supreme Court of Arkansas erred in depriving the appellant, W. B. Worthen Company, Agent, of all substantial remedy for the collection of its judgment by process of garnishment, which remedy was in existence under the laws of the State of Arkansas at the time the debt, which is the basis of appellant's judgment herein, was contracted and was in existence at the time the judgment was rendered and at the time the writ of garnishment issued and the lien thereof attached and at the time said Act 102 was adopted by the Arkansas General Assembly. The judgment of the court deprives appellant, W. B. Worthen Company, Agent, of all effectual remedy and leaves it with no means to collect its judgment from the fund arising from said policy of insurance.

"2. The Supreme Court of Arkansas erred in holding that Act 102 of the General Assembly of the State of Arkansas adopted March 16, 1933, is valid as applied to said appellant's rights in this cause. The court erred in holding that the act is valid in its provision that all proceeds of life, sick, accident or disability benefit policies shall be exempt from liability or seizure under judicial process of any court and shall not be subjected to the payment of any debt by contract or otherwise by any writ, order, judgment or decree of any court.

"3. The Supreme Court of Arkansas erred in vacating the garnishment which said appellant had sued out and by which it had obtained a lien upon the proceeds of life insurance policy payable to appellee who is indebted to appellant, W. B. Worthen Company, Agent, upon a judgment in this cause for the payment of money, such writ of garnishment having duly issued and a lien thereunder attached before the adoption of Act 102 named above.

"6. The Supreme Court of Arkansas erred in holding that said Act 102 as applied in this cause does not impair the obligation of contracts, contrary to the provisions of the Constitution of the United States, Article 1, Section 10.

"7. The Supreme Court of Arkansas erred in holding that Act 102 does not abridge the privileges and immunities of appellant, W. B. Worthen Company, Agent, as guaranteed by the Fourteenth Amendment of the Constitution of the United States, and that it does not deprive said appellant of its property without due process of law contrary to the provisions of said amendment" (Tr. 49-50).

The appellant's statement as to the jurisdiction of this court was filed with the petition for appeal, February 9, 1934, and served upon the appellee the same date (Tr. 55-60). The statement described the appeal as being taken under United States Code, Title 28, Section 344, Judicial Code, Section 237, and amendments, involving the validity under the Constitution of the United States of an act adopted by the General Assembly of the State of Arkansas and approved March 16, 1933, and set out the act *in extenso* (Tr. 55-56), and in narrative form described the case (Tr. 56-58), and to sustain the jurisdiction of this court cited:

Arthur Bronson v. *John H. Kinzie*, 1 Howard 311.

Gunn v. *Barry*, 15 Wall. 610.

Edwards v. *Kearzey*, 96 U. S. 595.

Memphis v. *United States*, 97 U. S. 293.

Antoni v. *Greenhaw*, 107 U. S. 798.

Conn. Mutual Life Ins. Co. v. *Cushman*, 108 U. S. 65.

Port of Mobile v. *United States*, 116 U. S. 305.

Seibert v. *United States*, 122 U. S. 294.

McGahey v. *Virginia*, 135 U. S. 694.

Louisiana v. *New Orleans*, 215 U. S. 178.

Kuhn v. *Fairmont Coal Co.*, 215 U. S. 369.

Northern Pacific Railway Co. v. *Wall*, 241 U. S. 91.

Bank of Minden v. *Clement*, 256 U. S. 126.

Shwab v. *Doyle*, 258 U. S. 534.

Hardware Dealers' Mutual Fire Ins. Co. v. *Glidden Company*, 284 U. S. 151.

Appellee's statement in denial of jurisdiction (Tr. 62-67) states that appellants have failed to comply with rule 12 as amended in that they did not file their statement as to jurisdiction with the petition for appeal. It is shown above that this was done. The statement also says that no question under the Fourteenth Amendment was raised below. This is shown to have been done on petition for rehearing (Tr. 58, 44-45). The appellee contends that a judgment is not a contract within the meaning of the Constitution. These appellants contend that the act of the Legislature as construed by the Arkansas Supreme Court invalidates the contract on which the judgment was based. Appellee quotes in full the opinion of the Arkansas Supreme Court as showing that the appeal should be affirmed or dismissed. These appellants are contending that the decision should be reversed because it construes the statute so as to destroy appellants' contractual rights.

We submit that there is nothing in the statement in denial of jurisdiction or in the motion to dismiss or affirm which should be taken against this appeal, and that the appeal is not frivolous. All judicial power to enforce the

judgment against this fund is taken away by the decision, and the vested right of a garnishment lien is destroyed.

(e) *Specification of Assigned Errors*

The errors assigned are that the statute as construed by the Arkansas Supreme Court, as affecting the antecedent contract of the parties and the lien of the garnishment in this case, violates the assurances of Article 1, Section 10, and the due process provisions of the Fourteenth Amendment to the Constitution of the United States, in that the obligation of appellant, W. B. Worthen Company, Agent's, contract with appellee is impaired, the right and means of collecting its judgment, and the lien of the garnishment, a vested right, being destroyed, and leaving no adequate means of remedy. (Appellants, George G. Worthen and Mollie P. Worthen, are supersedeas sureties for the other appellant in the Supreme Court of Arkansas, and judgment was there rendered against them for costs.)

(f) BRIEF AND ARGUMENT

A short statement of the appeal is that appellant, W. B. Worthen Company, Agent, recovered a judgment in the sum of $1,200 against appellee for the payment of money upon a contract and garnished a life insurance company which owed appellee upon a policy on the life of her husband the sum of $5,000. The garnishment became a lien. After this, the Legislature enacted a law exempting from all judicial process the proceeds of life insurance policies payable to residents of the state. The trial court and the Arkansas Supreme Court construed this statute so as to vacate the lien of the garnishment and exempt the fund from judicial process. It has been shown in the foregoing statement of the case that the Federal constitutional questions were raised and maintained at all times. We, of course, agree that in remedial and procedural legislation a "state may choose the remedy best adapted, in the legislative judgment, to protect the interests concerned," followed by the proviso that "its choice is not unreasonable or arbitrary." *Insurance Company* v. *Glidden Co.*, 284 U. S. 151. Garnishment is provided for in Arkansas by statute. Crawford & Moses' Digest of the Statutes of Arkansas, 1921, Section 4906, provides as follows:

> "In all cases where any plaintiff may begin an action in any court * * * or may have obtained a judgment * * * and such plaintiff shall have reason to believe that any other person is indebted to the defendant, or has in his hands or possession * * * moneys, credits * * * belonging to such defendant, such plaintiff may sue out a writ of garnishment, setting forth such claim, demand or judgment, and commanding the officer charged with the execution thereof to summon the person therein named, as garnishee, to appear at the re-

turn day of such writ, and answer what * * * moneys, credits * * * he may have in his hands or possession belonging to such defendant to satisfy said judgment * * *."

Section 4911 provides for the garnishee to answer.

Section 4913 provides:

"* * * if the issue be found for the plaintiff, judgment shall be entered for the amount found due from the garnishee to the defendant in the original judgment, or so much thereof as will be sufficient to satisfy the plaintiff's judgment, with costs."

Construing this statute, the Supreme Court of Arkansas has held that the issuance and service of the writ creates a lien upon the credit or the fund so attached.

"By the service of the writ of garnishment a lien is fixed upon the indebtedness of the garnishee to the defendants, and no subsequent arrangement or cancellation between the garnishee and defendants could destroy the lien or affect the rights of the plaintiffs."

Desha v. *Baker*, 3 Ark. 509.

Martin v. *Foreman*, 18 Ark. 249.

Smith v. *Butler*, 72 Ark. 350.

St. Louis Southwestern Ry. Co. v. *Vanderberg*, 91 Ark. 252.

In *Gunn* v. *Barry*, 15 Wallace 610, this court said, in holding void a state statute which so enlarged exemptions as to deprive an antecedent judgment creditor of his judgment lien:

"No one can cast his eyes over the former and later exemptions without being struck by the greatly increased magnitude of the latter * * *. The effect of the act in question, under the circumstances of this

judgment, does not indeed merely impair; it annihilates the remedy. There is none left. But the act reaches still further. It withdraws the land from the lien of the judgment, and thus destroys a vested right of property which the creditor had acquired in the pursuit of the remedy to which he was entitled by the law as it stood when the judgment was recovered. It is, in effect, taking one person's property and giving it to another without compensation. This is contrary to reason and justice, and to the fundamental principles of the social compact. * * * The legal remedies for the enforcement of a contract, which belong to it at the time and place where it is made, are a part of its obligation. A state may change them; provided the change involves no impairment of a substantial right. If the provision of the Constitution or the legislative act of a state, fall within the category last mentioned, they are to that extent utterly void. They are, for all the purposes of the contract which they impair, as if they had never existed. * * * The jurisdictional prohibition which they contain with respect to the courts of the state, can, therefore, form no impediment to the plaintiff in error in the enforcement of his rights touching this judgment, as those rights are recognized by this court."

It was said in *Terry* v. *Anderson*, 5 Otto 628:

"In all cases of alteration of remedies, the question is one of reasonableness."

And this, of course, is the rule of this court in the Minnesota moratorium case (*Home Building & Loan Ass'n* v. *Blaisdell*, Supreme Court Reporter, Vol. 54, No. 5, p. 231). The effect of the decision of the Supreme Court of Arkansas is to make exempt retrospectively all proceeds of life insurance policies. Such an exemption is so lacking in uniformity and may be so grossly excessive in value as to be constitutionally void under the decisions of this court. This is not

an exemption statute in any true or reasonable sense. Arkansas has long had in effect exemption laws, as follows:

> Unmarried persons $200 and married persons $500 in personal property in addition to wearing apparel. Homestead, country, not exceeding 160 acres or $2,500 in value, minimum 80 acres; city not exceeding 1 acre or $2,500 in value, minimum ¼ acre (Arkansas Constitution 1874, Art. 9, Sec. 1-5). Sixty days wages of laborers and mechanics (Crawford & Moses' Digest, 1921, Sec. 5546.) The proceeds of life insurance for the benefit of a wife or children are exempt from the claims of creditors of the *insured* (Acts of Arkansas 1931, p. 378). Fraternal society insurance policy funds are exempted (Crawford & Moses' Digest, 1921, Sec. 6096; Acts of Arkansas, 1925, p. 398).

The usual judicial process for enforcement of judgments is in force in the state, execution, attachment, garnishment. Without the aid of such process a judgment is a nullity. This court will know that life insurance is maintained in varying amounts; that some individuals are insured in very large amounts; that the total of such insurance in force is in billions of dollars. Its proceeds sometimes enrich beneficiaries, become substantial wealth, and no sound constitutional policy calls for the entire exemption of such beneficiaries or insured persons, "residents" of Arkansas, from all judicial process for the collection of an antecedent debt from such funds. There is no appropriate remedy known to the law for levying, that is attaching, and executing a judgment as to such a fund except that of garnishment. The fund arising from an insurance policy would not be subject to physical levy. It is but a credit. This court, in deciding *Minden* v. *Clement*, 256 U. S. 126, quoted: *Sturges* v. *Crowninshield*, 4 Wheat. 122, 197, 198,

and *Planters Bank* v. *Sharp*, 6 How. 301, 327, which hold that a test that a contract has been impaired is that its value has by legislation been substantially diminished. The footnotes to the majority opinion in *Home Building Association* v. *Blaisdell* (January 8, 1934) cite the Bank of Minden case as one of those in which the change of remedies destroyed substantial rights.

It is true that there is an emergency provision in the statute which is involved. That provision bears no relation to its validity in a constitutional sense. Hard times, financial distress, debt and panic have never been taken here as an excuse for the destruction of contracts and vested rights.

In *Edwards* v. *Kearzey*, 6 Otto 595, this court declared unconstitutional exemption laws adopted by the state of North Carolina which affected contracts made before the adoption of the constitution. We think that all legislatures and courts should have before them some of the matter contained in that opinion. After stating the facts as to the case and defining the words "impair" and "obligation," the court said:

> "The obligation of a contract includes every thing within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it, the contract, as such, in the view of the law, ceases to be, and falls into the class of those 'imperfect obligations,' as they are termed, which depend for their fulfillment upon the will and conscience of those upon whom they rest. The ideas of right and remedy are inseparable. 'Want of right and want of remedy are the same thing.' 1 Bac. Abr., tit. Actions in General, letter B.
>
> "In *Von Hoffman* v. *Quincy*, 4 Wall. 535 (71 U. S. 18 403), it was said: 'A statute of frauds embracing

pre-existing parol contracts not before required to be in writing would affect its validity. A statute declaring that the word "ton" should, in prior as well as subsequent contracts, be held to mean half or double the weight before prescribed would affect its construction. A statute providing that a previous contract of indebtment may be extinguished by a process of bankruptcy would involve its discharge; and a statute forbidding the sale of any of the debtor's property under a judgment upon such a contract would relate to the remedy.'

"It cannot be doubted, either upon principle or authority, that each of such laws would violate the obligation of the contract, and the last not less than the first. These propositions seem to us too clear to require discussion. It is also the settled doctrine of this court, that the laws which subsist at the time and place of making a contract enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This rule embraces alike those which affect its validity, construction, discharge and enforcement. *Von Hoffman* v. *Quincy* (*supra*); *McCracken* v. *Hayward*, 2 How. 608.

"In *Green* v. *Biddle*, 8 Wheat. 1, this court said, touching the point here under consideration: 'It is no answer, that the Acts of Kentucky now in question are regulations of the remedy, and not of the right to the lands. If these Acts so change the nature and extent of existing remedies as materially to impair the rights and interests of the owner, they are just as much a violation of the compact, as if they overturned his rights and interests.'

" 'One of the tests that a contract has been impaired is, that its value has by legislation been diminished. It is not by the Constitution to be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation—dispensing with any part of its force.' *Bk.* v. *Sharp*, 6 How. 301.

"It is to be understood that the encroachment thus denounced must be material. If it be not material, it will be regarded as of no account.

"These rules are axioms in the jurisprudence of this court. We think they rest upon a solid foundation. Do they not cover this case; and are they not decisive of the question before us? * * *

"We say, as was said in *Gunn* v. *Barry*, 15 Wall. 622 (82 U. S. XXI, 214), that no one can cast his eyes upon the new exemptions thus created without being at once struck with their excessive character, and hence their fatal magnitude. The claim for the retrospective efficacy of the Constitution or the laws cannot be supported. Their validity as to contracts subsequently made admits of no doubt. *Bronson* v. *Kinzie, supra.*

"The history of the National Constitution throws a strong light upon this subject. Between the close of the War of the Revolution and the adoption of that instrument, unprecedented pecuniary distress existed throughout the country.

" 'The discontents and uneasiness, arising in a great measure from the embarrassment in which a great number of individuals were involved, continued to become more extensive. At length, two great parties were formed in every State, which were distinctly marked, and which pursued distinct objects with systematic arrangement.' 5 Marshall, L. of Washington, 75. One party sought to maintain the inviolability of contracts, the other to impair or destroy them. 'The emission of paper money, the delay of legal proceedings, and the suspension of the collection of taxes, were the fruits of the rule of the latter, wherever they were completely dominant.' 5 Marshall, L. of Washington, 86.

" 'The system called justice was, in some of the States, iniquity reduced to elementary principles. * * * In some of the States, creditors were treated as outlaws. Bankrupts were armed with legal authority to be persecutors and, by the shock of all confidence, society

was shaken to its foundations.' Fisher Ames' Works; ed. of 1859, 120. * * *

" 'The effects of these laws interfering between debtors and creditors were extensive. They destroyed public credit and confidence between man and man, injured the morals of the people, and in many instances insured and aggravated the ruin of the unfortunate debtors for whose temporary relief they were brought forward.' 2 Ramsey, Hist. S. C., 429. * * *.

"We think the views we have expressed carry out the intent of contracts and the intent of the Constitution. The obligation of the former is placed under the safeguard of the latter. No State can invade it; and Congress is incompetent to authorize such invasion. Its position is impregnable, and will be so while the organic law of the nation remains as it is. The trust touching the subject with which this court is charged is one of magnitude and delicacy. We must always be careful to see that there is neither non-feasance nor misfeasance on our part.

"The importance of the point involved in this controversy induces us to restate succinctly the conclusions at which we have arrived, and which will be the ground of our judgment.

"The remedy subsisting in a State when and where a contract is made and is to be performed is a part of its obligation, and any subsequent law of the State which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution, and is, therefore, void. * * *

"The debts in question were incurred before the exemptions took effect. The court now holds that the exemptions are invalid. In this I concur, not for the reason that any and every exemption made after entering into a contract is invalid, but that the amount here exempted is so large, as seriously to impair the creditor's remedy for the collection of the debt. * * *

"In my judgment, the exemption provided for by the North Carolina Constitution is so large, that, in

regard to the mass of contracts and the situation and circumstances of debtors as they are ordinarily found to exist, it would seriously affect the efficiency of remedies for the collection of debts, and that it must, therefore, be held to be void."

In *Memphis* v. *United States*, 7 Otto 293, it is said:

"It is an acknowledged principle that a creditor by contract has a vested right to the remedies for the recovery of the debt which existed at law when the contract was made, and the Legislature of a State cannot take them away without impairing the obligation of the contract, though it may modify them, and even substitute others, if a sufficient remedy be left, or another sufficient one be provided. The law is, in effect, a part of the contract. * * *

"If, as asserted by Blackstone, the judgment was itself a contract, the remedies of its enforcement, existing at the time when it was recovered, could not be taken away either by direct legislation, or indirectly, by repealing the law which gave those remedies. And if the judgment may not be considered a contract of record, still the vested rights it gave to the relator, whatever they were, are equally secure against legislative invasion."

In *Bronson* v. *Kinzie*, 1 How. 311, 317, it is said:

"And no one, we presume, would say that there is any substantial difference between a retrospective law declaring a particular contract or class of contracts to be abrogated and void and one which took away all remedy to enforce them, or incumbered it with conditions that rendered it useless or impracticable to pursue it."

In *McGahey* v. *State of Virginia*, 135 U. S. 662, it is said:

"It is well settled by the adjudications of this court that the obligation of a contract is impaired, in the

sense of the Constitution, by any Act which prevents its enforcement, or which materially abridges the remedy for enforcing it, which existed at the time it was contracted, and does not supply an alternative remedy equally adequate and efficacious."

In *Louisiana* v. *New Orleans*, 215 U. S. 180, the court quoted Mr. Justice Field as saying in *Louisiana* v. *New Orleans*, 102 U. S. 203, 205:

> " 'The obligation of a contract, in the constitutional sense, is the means provided by law by which it can be enforced,—by which the parties can be obliged to perform it. Whatever legislation lessens the efficacy of these means impairs the obligation'."

In *Kuhn* v. *Fairmont Coal Co.*, 215 U. S. 349, 369, it is said:

> "At all events, the decisions of this court are numerous that the laws which prescribe the mode of enforcing a contract, *which are in existence when it is made*, are so far a part of the contract that no changes in these laws which seriously interfere with that enforcement are valid, because they impair its obligation, within the meaning of the Constitution of the United States."

In *Northern Pacific Ry.* v. *Wall*, 241 U. S. 87, 91, it is said:

> "As this court often has held, the laws in force at the time and place of the making of a contract, and which affect its validity, performance and enforcement, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms."

The prospective operation of the statute is, of course, not involved in this appeal—only its retrospective—that is, its effect upon a debt by contract in existence at the time

of its adoption. We respectfully say that the Supreme Court of Arkansas should have construed the statute as being prospective only in its operation.

In *Shwab* v. *Doyle*, 258 U. S. 534, it is said:

> "The initial admonition is that laws are not to be considered as applying to cases which arose before their passage unless that intention be clearly declared. (Citing cases.) The comment of Story is, 'retrospective laws are, indeed, generally unjust; and, as has been forcibly said, neither accord with sound legislation nor with the fundamental principles of the social compact.'"

We respectfully submit that the motion to dismiss or affirm should be overruled, that the appellee's statement against the jurisdiction of this court is not well taken, and that the judgment of the Supreme Court of Arkansas should be reversed.

Respectfully submitted,

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(g) APPENDIX

In the Supreme Court of Arkansas, November 27, 1934.

W. B. Worthen Company, Agent, v. Thomas.

STATEMENT BY THE COURT

Appellant, W. B. Worthen Co., Agent, plaintiff below, procured judgment *in personam* against one Ralph Thomas and Mrs. W. D. Thomas, known also as Van Cleve Thomas, appellee herein, doing business as co-partners under the firm name and style of Enterprise Harness Company, based upon personal service of summons upon each of said defendants, in the Pulaski Circuit Court, Second Division, on August 31, 1932, in the sum of $1,200 with interest thereon at 6 per cent per annum from July 5, 1932, until paid and costs. The judgment was not appealed from and remains in full force.

Pursuant to said judgment the appellant caused writs of garnishment with allegations and interrogatories to be served upon certain persons, naming them, who answered denying having any property belonging to either Ralph Thomas or Mrs. W. D. Thomas, and stating further that they were not indebted to them, or either of them, in any amount.

That appellant caused a writ of garnishment based upon the judgment aforesaid with allegations and interrogatories to be served upon the Missouri State Life Insurance Company by the sheriff of Pulaski County by delivering same to U. A. Gentry, State Insurance Commissioner, the agent designated by said garnishee for service of process upon it in Pulaski County, wherein appellant alleged that

said garnishee had in its hands and possession $5,000 belonging to appellee as shown by the sheriff's return.

The Legislature enacted Act 102 at its 1933 session, the title and first section of which reads as follows:

ACT 102

"An Act to Extend the Exemption Laws of this State.

"*Be It Enacted by the General Assembly of the State of Arkansas*:

"Section 1. All moneys paid or payable to any resident of this State as the insured or beneficiary designated under any insurance policy or policies providing for the payment of life, sick, accident and/or disability benefits shall be exempt from liability or seizure under judicial process of any court, and shall not be subjected to the payment of any debt by contract or otherwise by any writ, order, judgment or decree of any court, provided, that the validity of any sale, assignment, mortgage, pledge or hypothecation of any policy of insurance or if any avails, proceeds or benefits thereof, now made, or hereafter made, shall in no way be affected by the provisions of this act.

"Approved: March 16, 1933."

Appellee filed a motion to dismiss the writ of garnishment against the life insurance company issued and served on March 10, 1933, and for the further purpose of scheduling a certain sum of money owed her by the aforesaid insurance company as exempt from garnishment or seizure under the provisions of Act 102 of 1933, which she alleged exempted the money due her from garnishment or seizure under the judicial process of any court.

On April 6, 1933, the insurance company answered the garnishment, stating that it had issued theretofore to W. D. Thomas its policy No. 86800 in the amount of $5,000; "That appellee herein, Mrs. W. D. Thomas, known also as Van Cleve Thomas, was designated as beneficiary therein, and that she had made claim on it for the proceeds of said policy. That by reason of certain accumulations on said policy that it admitted an indebtedness thereunder in the amount of five thousand fifty-seven and 80/100 dollars ($5,057.80), and that it was ready to pay this amount to said beneficiary when authorized to do so by an order of the Pulaski Circuit Court."

It stated further: "That by the provisions of Act 102, enacted by the General Assembly of the State of Arkansas, at its 1933 session, all moneys payable to any resident of this State under a policy of insurance are exempt and not subject to seizure under judicial process of any court. That appellee was then a resident of this State," and prayed the court to enter an order discharging it of all liability to appellant, and that it be authorized to pay the proceeds of the policy to appellee.

On April 7, 1933, the court upon a petition of appellee found that $2,000 was a sufficient amount to satisfy any claim or judgment that appellant could have against any of the funds held by the insurance company, and ordered upon the payment of that amount into the registry of the court by it, that said company should be discharged from any liability arising from the writ of garnishment and that it be discharged with its costs.

On April 20, 1933, appellant filed its response to the motion to dismiss the writ of garnishment, and on April 29 it filed an amendment thereto in which it resisted the

aforesaid motion to dismiss, challenging Act 102 of 1933 as unconstitutional and void.

On the hearing the court found that the insurance company had paid $2,000 into the registry of the court pursuant to its order and was discharged from further liability as garnishee, which was held subject to further order of the court, and that said sum of money was exempt from liability or seizure under any judicial process of any court and granted said motion and schedule. Ordered that the money paid into court be released from liability under the garnishment and ordered the clerk to pay over the money to Mrs. W. D. Thomas, or her attorney of record, taking a receipt therefor on the margin of the record. Appellant excepted to the court's action in granting the motion and schedule and prayed an appeal to the Supreme Court.

KIRBY, J., (after stating the facts):

The only question for determination here is the constitutionality of act 102 of 1933, approved March 16, 1933.

It is insisted that said act is violative of section 10, article 1, of the Constitution of the United States as impairing the obligations of a contract, and section 17 of article 2 of the Constitution of Arkansas.

In *Acree* v. *Whitley*, 136 Ark. 149, 206 S. W. 137, it was said: "It may be stated at the outset that section 21 does not relate to the absolute exemption of personal property allowed a resident of this state as exempt from certain debts and liabilities under sections 1 and 2 of article 9 of our Constitution. The reason is, beneficiaries in insurance policies, as well as other persons, are obliged to pay judgments against them in favor of third persons and exemptions

from execution and other process of the court are fixed by the sections of the Constitution above referred to. The statute in question was not enacted for the purpose of allowing beneficiaries exemptions which they are not entitled to under the Constitution and laws of this State, but the act was passed for the purpose of exempting these funds from the operation of our general statutes regulating issuance of garnishments and proceedings thereunder."

It is true this act is broader in its terms than the one construed in the above case, since it exempts all moneys payable to any resident of the State: "as the insured or beneficiary designated under any insurance policy or policies providing for the payment of life, etc. * * * from liability or seizure under judicial process of any court, and shall not be subject to the payment of any debt by contract or otherwise by any writ, order, judgment or decree of any court, * * * provided that the validity of any sale, mortgage, or hypothecation of any policy of insurance, etc., shall in no way be affected by the provisions of this act."

As said by this court of the other statute, it can well be said of this statute, Act 102 of 1933, that it "does not relate to the absolute exemption of personal property allowed by a resident of this state as exempt from certain debts and liabilities under sections 1 and 2 of article 9 of our Constitution. * * * was not enacted for the purpose of allowing beneficiaries exemptions which they are not entitled to under the Constitution and law of this State, but the act was passed for the purpose of exempting these funds from the operation of our general statutes regulating issuance of garnishments and proceedings thereunder."

This could be done without violation of our Constitution. No creditor has the right to any particular remedy

and such statutes prohibit only the issuance of garnishments against such funds as already held by our court; and neither does it violate the Constitution of the United States in impairing the obligations of a contract by prohibiting the use of certain procedure in subjecting certain insurance funds to the payment of a judgment against the beneficiary in an insurance policy * * * funds that were not in existence when the judgment was obtained and were allowed to be provided for by the insured whom the law allows to expend a certain amount of money to provide insurance for the benefit of his wife.

The law allows the equities in cases to be considered in the construction of the statutes relating to the subject in question. *Evans-Snider-Buel Co.* v. *McFadden*, 58 L. R. A. 900.

The judgment is affirmed.

MEHAFFY, J., dissents.

ACT 102

"AN ACT to Extend the Exemption Laws of This State.

"*Be It Enacted by the General Assembly of the State of Arkansas*:

"Section 1. All moneys paid or payable to any resident of this state as the insured or beneficiary designated under any insurance policy or policies providing for the payment of life, sick, accident and/or disability benefits shall be exempt from liability or seizure under judicial process of any court, and shall not be subjected to the payment of any debt by contract or otherwise by any writ, order, judgment, or decree of any court, provided, that the validity

of any sale, assignment, mortgage, pledge or hypothecation of any policy of insurance or if any avails, proceeds or benefits thereof, now made, or hereafter made, shall in no way be affected by the provisions of this act.

"Section 2. All laws and parts of laws in conflict herewith are hereby repealed, provided, however, that nothing in this act shall be construed to repeal, modify or alter the provisions of Acts 76 and 141 of the Acts of the General Assembly of 1931.

"Section 3. It is ascertained and hereby declared that the vast majority of those now holding insurance policies are compelled, owing to the desperate financial situation now existing, to make every possible sacrifice in order to maintain their policies in force for the benefit of themselves and their families, and that in most instances whatever rights they hold in said policies constitute their entire resources, and to be deprived of the same will seriously affect the well being of a great number of the citizens of this state who would thereby be reduced to the position of becoming public charges to the great harm and detriment of the entire state, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage.

"Approved March 16th, 1933."

Acts of Arkansas, Forty-ninth General Assembly, 1933, page 321.

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MAY 7 19
CHARLES ELMORE

IN THE

Supreme Court of the United States

W. B. WORTHEN COMPANY, AGENT, GEORGE G. WORTHEN AND MOLLIE P. WORTHEN ..... *Appellants,*

v. No. 856

MRS. W. D. THOMAS ..... *Appellee.*

APPELLANTS' REPLY BRIEF

HENRY M. ARMISTEAD,
EUGENE H. MURPHY,
FRANCIS T. MURPHY,

Attorneys for Appellants.

DEMOCRAT P. & L. CO., LITTLE ROCK

APPELLANTS' REPLY BRIEF

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IN THE

Supreme Court of the United States

W. B. WORTHEN COMPANY, AGENT, GEORGE G. WORTHEN AND MOLLIE P. WORTHEN ..... *Appellants,*

v. No. 856

MRS. W. D. THOMAS ..... *Appellee.*

APPELLANTS' REPLY BRIEF

Appellee says at page 12 of her brief that this insurance fund is exempt under the provisions of Act 141 of the Acts of Arkansas of 1931; that such act was adopted from the New York Act of 1840, which has been construed by the New York courts as an exemption statute for the wife, and, not having been otherwise construed by the Supreme Court of Arkansas, the New York construction is controlling. This claim was not made at any previous stage of this proceeding and the provisions of Act 141 were not invoked.

The fact is that Arkansas did adopt the New York law in 1873. Section 5579, Crawford & Moses' Digest of the Statutes of Arkansas (1921). After New York adopted the law, which is said to be the first instance of its adop-

tion, it was there amended and changed several times. Chapter 187, Laws of 1858, page 306; Chapter 70, Laws of 1862, page 214; Chapter 656, Laws of 1866, page 1413; Chapter 277, Act of April 18, 1870, page 612; Chapter 248, Act of May 5, 1879, page 326; Chapter 272, Act of April 17, 1896, Section 22, page 215.

During the course of the years the New York laws were construed by the courts of that State. It was held that the wife's interest was not assignable. Some of these decisions are referred to in the case of *Baron* v. *Brummer*, New York Court of Appeals, 3 N. E. 474. That opinion says that the construing decisions arose under various provisions of the amendatory legislative acts. Arkansas did not adopt the New York construction. The New York law of 1840, adopted here in 1873, was not changed by the Legislature of Arkansas until 1931. It remained in force exactly as it had originally been adopted in New York. In the case of *Mente* v. *Townsend*, 68 Ark. 391 (1900) it was decided that a wife might assign her interest in such a policy. The act of 1873 is quoted in full and construed and the decision of the Supreme Court of Arkansas in that case is directly opposite to the New York decisions. In the case of *Townes* v. *Krumpen*, 184 Ark. 910 (1931), the Supreme Court again construed the act, setting it forth in full and saying:

> "Our said statute was obviously borrowed from the laws of New York, being in the identical language of its statute of 1840, which had not been construed, so far as we can ascertain, by any of its courts before its enactment here in 1873, and any later construction of

the statute by the courts of that State is not presumed to have been adopted in its enactment here and is in no wise controlling upon our courts. (Citing cases). Most of the New York cases cited were in construction of its amended statutes."

It will thus be seen that the Arkansas court is not for any reason bound by the New York decisions. It has refused to adopt them or follow them and has specifically decided otherwise. Besides which, the New York decisions are not Apposite, as they arise under a different frame of laws and under differing amendments and alterations. In addition to this, Arkansas' Act 141 of 1931, which is an amendment to the statute of 1873, is not identical or even substantially the same as the New York law of 1840. We set it out in an appendix italicizing that part which re-enacts the law of 1840. It will be seen that additions are made to the law of 1840, having other objects in purview, and that no intention is expressed or implied to exempt the proceeds of life insurance from the wife's creditors. It is so plainly true that she had no such exemption that the Legislature was moved to adopt Act 102 of the 1933 session, in which enactment her exemption originates.

In view of the decision appealed from and now before this court it is curious to note a decision of the Supreme Court of Arkansas delivered December 4, 1933, not yet officially published, *Strauss* v. *Missouri State Life Insurance Company*, 66 S. W. (2d) 299, (The Law Reporter, Volume 52, No. 11, page 589). The third headnote is;

"Under a policy of life insurance, when the insured died and proof of the death was submitted to

and approved by the insurance company, the rights of the parties became vested and no subsequent act of the Legislature could impair such vested rights."

It appears inferentially from the decision that the appellant was the beneficiary in two policies of insurance when the proceeds became recoverable, but which were offset by the insurance company on her indebtedness to it, and that she sued for the insurance, claiming it as exempt under Act 102. The court said:

"It is next contended that Act 102 of 1933 exempts the proceeds of the two policies of insurance in this controversy to appellant. On this question but little need be said. The testimony shows that the insured died in April, 1932; that the proof of death was made and approved by appellee on May 6, 1932. On the happening of these two events, that is to say, the death of the insured and the acceptance of the proof of death, the rights of the parties to the proceeds of said insurance became vested, and no subsequent act of the Legislature could impair this vested right. We therefore hold that act 102 of the Acts of 1933 has no application to the facts in this case."

Appellants here repeat their contention that the decision in this case destroyed vested rights; that as the act, as construed by the Arkansas court retrospectively denies all judicial process for the enforcement of a judgment and destroys a lien which had been fixed, it is unconstitutional.

Respectfully submitted,

HENRY M. ARMISTEAD,
EUGENE H. MURPHY,
FRANCIS T. MURPHY,
Attorneys for Appellants.

APPENDIX

Act 141 of the Acts of Arkansas, 1931, page 378

Section 1. That Section 5579 of Crawford & Moses' Digest of the Statutes of Arkansas be amended to read as follows:

"Section 5579. *It shall be lawful for any married woman, by herself and in her name, or in the name of any third person, with his assent, as her trustee, to cause to be insured, for her sole use, the life of her husband, for any definite period, or for the term of his natural life; and, in case of her surviving her husband, the sums or net amount of the insurance becoming due and payable by the terms of the insurance shall be payable to her and for her use; and, in case of the death of the wife before the decease of her husband, the amount of said insurance may be made payable to his or her children, for their use, and to their guardian for them, if they shall be under age, as shall be provided in the policy of insurance; and all proceeds and avails of such insurance shall be free from the claims of the representatives of the husband, or of any of his creditors,* whether or not the right to change the beneficiary is reserved or permitted; provided, that subject to the statute of limitations, the amount of any premiums for said insurance paid out of the funds or property of the husband with intent to defraud creditors, with interest thereon, shall enure to their benefit from the proceeds of the policy; but the company issuing the policy shall be discharged of all liability thereon

by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice, by or in behalf of a creditor of a claim to recover for premiums paid with intent to defraud creditors, with specifications of the amount claimed, provided, this act shall not apply to pending suits."

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MAR 12 1934
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 856

W. B. WORTHEN COMPANY, AGENT, GEORGE G. WORTHEN AND MOLLIE P. WORTHEN,
Appellants,

vs.

MRS. W. D. THOMAS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

KENNETH W. COULTER,
FRED A. ISGRIG,
HARRY ROBINSON,
Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933.

No. 856

W. B. WORTHEN COMPANY, AGENT, GEORGE G. WORTHEN AND MOLLIE P. WORTHEN,

Appellants,

vs.

MRS. W. D. THOMAS.

STATEMENT IN DENIAL OF JURISDICTION.

The appellee denies the jurisdiction of this Court to review the above entitled cause on appeal and respectfully states:

1. The appellee contends that this Court does not have jurisdiction in this matter for the reason that the appellant has failed to comply with rule 12 of the rules of the United States Supreme Court, as amended. At the time appellant filed his petition for allowance of appeal, it failed to file its statement as to the jurisdiction of this Court, as provided in rule 12, paragraph 1 of the rules of the Supreme Court of the United States.

2. The only Federal question raised by appellant in its pleadings in the Pulaski Circuit Court was that Act 102 of the Acts of Arkansas of 1933 was in contravention of Article 1, Section 10 of the Constitution of the United States, which prohibits the several states from passing any act which impairs the obligation of a contract. This is the only question that was passed on or could have been passed on by the Supreme Court of Arkansas, and the Supreme Court of the United States, as well as the Supreme Court of Arkansas, have many times held that a new issue cannot be raised for the first time on appeal.

Leonard v. *Luther*, 185 Ark. 572.

Turner v. *Richardson*, 180 U. S. 87.

3. The record in this case does not disclose that there is any privity of contract between the parties to this action, which Act 102 of the Acts of Arkansas for 1933 would impair. Appellant had a writ of garnishment issue out of the Pulaski Circuit Court based upon a judgment secured against the appellee. This Court has many times held that a judgment is not a contract within the meaning of Article 1, Section 10 of the Constitution of the United States, which prohibits the passing of legislation impairing the obligation of a contract.

Swift v. *McPherson*, 232 U. S. 51, 34 Supreme Court 239.

Morly v. *Lakeshore, etc.*, 146 U. S. 162, 13 Supreme Court 54.

Freeland v. *Wilson*, 131 U. S. 405, 9 Supreme Court 763.

Evans-Snyder-Buell Co. v. *McFadden*, 44 C. C. A. 494, 105 Fed. 293, 185 U. S. 505, 22 S. Ct. 758, 58 L. R. A. 900.

4. The opinion of the Supreme Court of Arkansas in this case is as follows:

"Statement by the court delivered November 27, 1933:

"Appellant, W. B. Worthen Company, agent, plaintiff below, procured judgment in person against one, Ralph Thomas, and Mrs. W. D. Thomas, known also as Van Cleve Thomas, appellee herein, doing business as co-partners under the firm name and style of Enterprise Harness Company, based upon personal service of summons upon each of said defendants, in the Pulaski Circuit Court, Second Division, on August 31, 1932, in the sum of $1,200, with interest thereon at 6 per cent. per annum from July 5, 1932, until paid, and costs. The judgment was not appealed from, and remains in full force.

"Pursuant to said judgment, the appellant caused writs of garnishment with allegations and interrogatories to be served upon certain persons, naming them, who answered, denying having any property belonging to either Ralph Thomas or Mrs. W. D. Thomas, and, stating further, that they were not indebted to them, or either of them, in any amount.

"That appellant caused a writ of garnishment, based upon the judgment aforesaid with allegations and interrogatories, to be served upon the Missouri State Life Insurance Company by the sheriff of Pulaski County by delivering same to U. A. Gentry, State Insurance Commissioner, the agent designated by said garnishee for service of process upon it in Pulaski County, wherein appellant alleged that said garnishee had in its hands and possession $5,000 belonging to appellee as shown by the sheriff's return.

"The Legislature enacted Act 102 at its 1933 session, the title and first section of which reads as follows:

"Act 102. An Act to Extend the Exemption Laws of this State.

"Be it enacted by the General Assembly of the State of Arkansas:

"SECTION 1. All moneys paid or payable to any resident of this State, as the insured or beneficiary designated under any insurance policy, or policies, providing for the payment of life, sick, accident and/or disability benefits, shall be exempt from liability or seizure under judicial process of any court, and shall not be subjected to the payment of any debt by contract, or otherwise by any writ, order, judgment or decree of any court, provided that the validity of any sale, assignment, mortgage, pledge or hypothecation of any policy of insurance or if any avails, proceeds or benefits thereof, now made, or hereafter made, shall in no way be affected by the provisions of this Act. Approved: March 16, 1933.

"Appellee filed a motion to dismiss the writ of garnishment against the life insurance company issued and served on March 10, 1933, and for the further purpose of scheduling a certain sum of money owed her by the aforesaid insurance company as exempt from garnishment or seizure under the provisions of Act 102 of 1933, which she alleged exempted the money due her from garnishment or seizure under the judicial process of any court.

"On April 6, 1933, the insurance company answered the garnishment, stating that it had issued theretofore to W. D. Thomas its policy No. 86800 in the amount of $5,000; 'that appellee herein, Mrs. W. D. Thomas, known also as Van Cleve Thomas, was designated as beneficiary therein, and that she had made claim on it for the proceeds of said policy. That by reason of certain accumulations on said policy, that it admitted an indebtedness thereunder in the amount of five thousand, fifty-seven and 80/100 dollars ($5,057.80), and that it was ready to pay this amount to the beneficiary when authorized to do so by an order of the Pulaski Circuit Court.'"

"It stated further: 'that by the provisions of Act 102, enacted by the General Assembly of the State of Arkansas, at its 1933 session, all moneys payable to any resident of this State under a policy of insurance are exempt and not subject to seizure under judicial process of any court. That appellee was then a resident of this State,' and prayed the court to enter an order discharging it of all liability to appellant, and that it be authorized to pay the proceeds of the policy to appellee.

"On April 7, 1933, the court, upon a petition of appellee, found that $2,000 wa a sufficient amount to satisfy any claim or judgment that appellant could have against any of the funds held by the insurance company, and ordered upon the payment of that amount into the registry of the court by it, that said company should be discharged from any liability arising from the writ of garnishment, and that it be discharged with its costs.

"On April 20, 1933, appellant filed its response to the motion to dismiss the writ of garnishment, and on April 29 it filed an amendment thereto in which it resisted the aforesaid motion to dismiss, challenging Act 102 of 1933 as unconstitutional and void.

"On the hearing, the court found that the insurance company had paid $2,000 into the registry of the court pursuant to its order, and was discharged from further liability as garnishee, which was held subject to further order of the court, and that said sum of money was exempt from liability or seizure under any judicial process of any court and granted said motion and schedule. Ordered that the money paid into court be released from liability under the garnishment, and ordered the clerk to pay over the money to Mrs. W. D. Thomas, or her attorney of record, taking a receipt therefor on the margin of the record. Appellant excepted to the court's action in granting the motion and schedule, and prayed an appeal to the Supreme Court.

"Kirby, J. (after stating the facts). The only question for determination here is the constitutionality of Act 102 of 1933, approved March 16, 1933.

"It is insisted that said Act is violative of paragraph 10, article 1, of the Constitution of the United States, as impairing the obligations of a contract, and paragraph 17 of article 2 of the Constitution of Arkansas.

"In *Acree* v. *Whitley*, 136 Ark. 149, 206 S. W. 137, it was said: 'It may be stated at the outset that paragraph 21 does not relate to the absolute exemption of personal property allowed a resident of this State, as exempt from certain debts and liabilities under paragraphs 1 and 2 of article 9 of our Constitution. The reason is beneficiaries in insurance policies, as well as other persons, are obliged to pay judgments against them in favor of third persons and exemptions from execution and other process of the court are fixed by the sections of the Constitution above referred to. The statute in question was not enacted for the purpose of allowing beneficiaries exemptions which they are not entitled to under the Constitution and laws of this State, but the act was passed for the purpose of exempting these funds from the operation of our general statutes regulating issuance of garnishments and proceedings thereunder.'

"It is true this act is broader in its terms than the one construed in the above case, since it exempts all moneys payable to any resident of the State: 'as the insured or beneficiary designated under any insurance policy or policies providing for the payment of life, etc., * * * from liability or seizure under judicial process of any court, and shall not be subject to the payment of any debt by contract or otherwise by any writ, order, judgment or decree of any court, * * * provided that the validity of any sale, mortgage, or hypothecation of any policy of insurance, etc., shall in no way be affected by the provisions of this act.'

"As said by this court of the other statute, it can well be said of this statute, Act 102 of 1933, that it 'does not relate to the absolute exemption of personal prop-

erty allowed a resident of this State as exempt from certain debts and liabilities under paragraphs 1 and 2 of article 9 of our Constitution. * * * was not enacted for the purpose of allowing beneficiaries exemptions which they are not entitled to under the Constitution and laws of this State, but the act was passed for the purpose of exempting these funds from the operation of our general statutes regulating issuance of garnishments and proceedings thereunder.'

"This could be done without violation of our Constitution. No creditor has the right to any particular remedy, and such statutes prohibit only the issuance of garnishments against such funds as already held by our court; and neither does it violate the Constitution of the United States in impairing the obligations of a contract by prohibiting the use of certain procedure in subjecting certain insurance funds to the payment of a judgment against the beneficiary in an insurance policy—funds that were not in existence when the judgment was obtained and were allowed to be provided for by the insured whom the law allows to expend a certain amount of money to provide insurance for the benefit of his wife.

"The law allows the equities in cases to be considered in the construction of the statutes relating to the subject in question. *Evans-Snider-Buel Co.* v. *McFadden*, 58 L. R. A. 900.

"The judgment is affirmed. Mehaffy, J., dissents."

The Supreme Court of Arkansas in its opinion has construed the Act in question—Act 102 of the Acts of Arkansas for 1933—as a remedial statute, in that Act 102 only affects the issuance of garnishments in certain cases. There was no such writ as a writ of garnishment in the common law, and it naturally follows that if the legislature of the State of Arkansas had the right to pass an act making the writ of garnishment available, then it cer-

tainly has the right to take away all of the right of garnishment or any part thereof.

Greene v. *Abraham*, 43 Ark. 420.
Freeburn v. *Smith*, 2 Wall. 160-175, 17 L. Ed. 923.
Baker v. *Kilgore*, 145 U. S. 487, 36 L. Ed. 786.
Terry v. *Anderson*, 95 U. S. 628-633, 24 L. Ed. 365-6.

It is therefore respectfully submitted that this Court is without jurisdiction to hear and determine this appeal.

KENNETH W. COULTER,
FRED A. ISGRIG,
HARRY ROBINSON,
Counsel for Appellee.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 856

W. B. WORTHEN COMPANY, AGENT, GEORGE G. WORTHEN AND MOLLIE P. WORTHEN,

Appellants,

vs.

MRS. W. D. THOMAS.

MOTION TO DISMISS OR AFFIRM.

Comes Mrs. W. D. Thomas, appellee, by Kenneth W. Coulter, Fred A. Isgrig and Harry Robinson, her counsel, and moves this Court to dismiss the appeal in this cause for want of jurisdiction and because the appeal is informal, irregular and insufficient for the reasons stated in the annexed argument and statement, denying jurisdiction and upon other grounds; and the said appellee also moves this Court to affirm the judgment of the Supreme Court of the State of Arkansas herein, upon the ground that it is manifest that the appeal herein was taken for delay only, and that the question upon which it is claimed that the jurisdiction depends is so frivolous as not to need further argument.

KENNETH W. COULTER,
FRED A. ISGRIG,
HARRY ROBINSON,
Attorneys and Counsel for Appellee.

(4722-C)

[redacted]

IN THE

[redacted] Court of the United States

[redacted]

v.

No. [redacted]

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BRIEF FOR [redacted]

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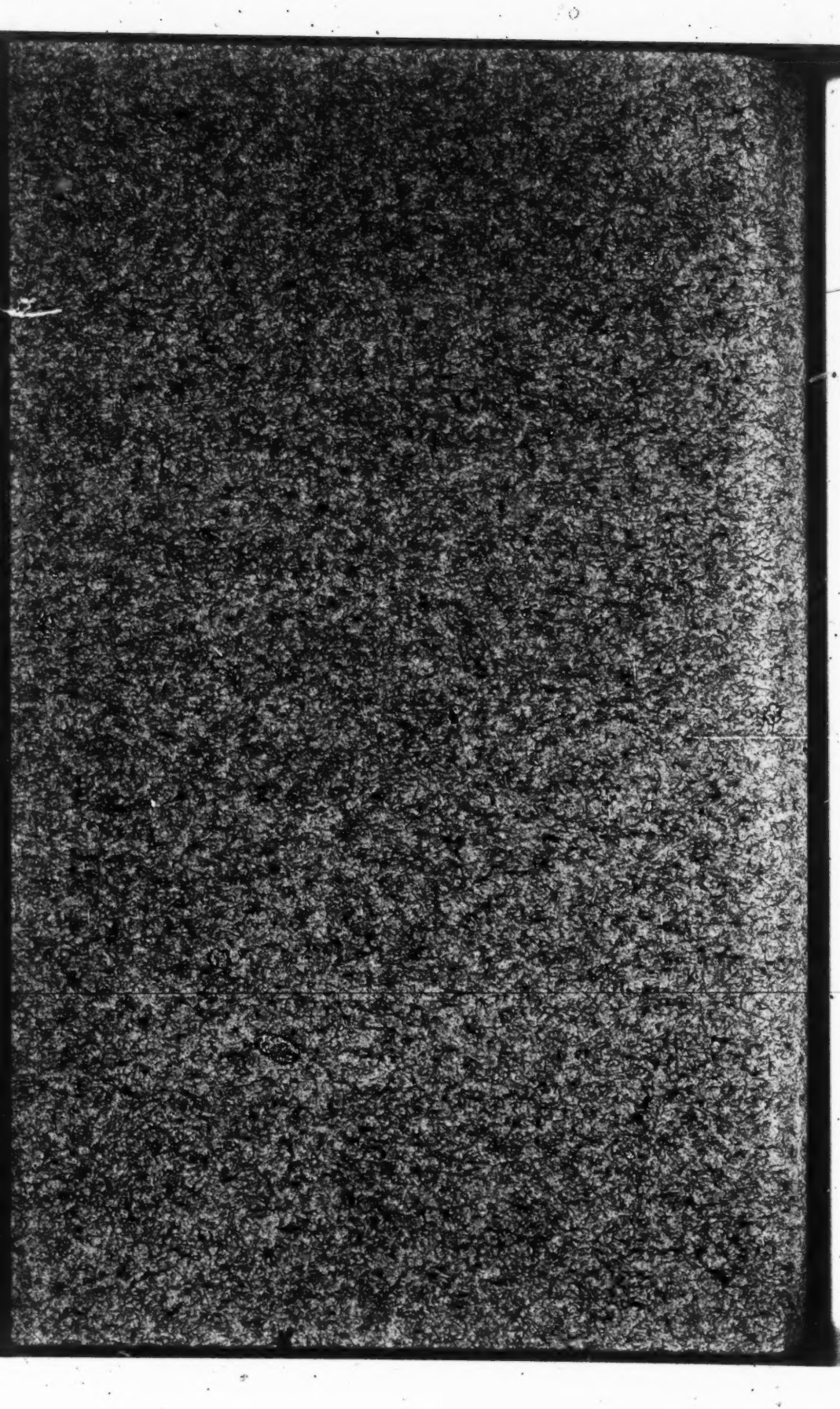

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Seylam v. Barber, 18 N. Y. 468, 74 Am. Dec. 254	4
Sturges v. Crowinshield, 4 Wheat. 200, 4 Law Ed. 529	6
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STATUTES AND AUTHORITIES CITED

Act No. 102 of the Acts of Arkansas of 1933, page 321	3, 4, 6, 10, 11, 12
Act No. 141 of the Acts of Arkansas of 1931, page 378	12, 13, 14
Cooley on Constitutional Limitations, page 346	7
Sutherland on Statute Constructions, Section 482	7

IN THE

Supreme Court of the United States

W. B. WORTHEN COMPANY, AGENT, GEORGE G. WORTHEN AND MOLLIE P. WORTHEN ..... *Appellants,*

v. No. .....

MRS. W. D. THOMAS ..... *Appellee.*

BRIEF FOR APPELLEE

STATEMENT

The facts in the case at bar have been fully stated in detail by appellants and are not disputed. Appellants admit that the act in question, Act 102, enacted by the General Assembly of Arkansas in its 1933 session approved March 16, 1933, is not unconstitutional prospectively, but allege that this act is unconstitutional when applied retrospectively.

It is first contended by appellants that Act 102 is unconstitutional because it impairs the obligation of a contract, and second because it takes property without due process of law.

BRIEF AND ARGUMENT

Act 102 of the Acts of Arkansas of 1933 does not impair the obligation of a contract.

At the time that the act in question, Act 102, was passed by the General Assembly of the State of Arkansas and approved by the Governor of the State of Arkansas, there was no contract existing between the appellant, W. B. Worthen Company, Agent, and Mrs. W. D. Thomas, appellee. Appellant did have a judgment against the appellee, Mrs. W. D. Thomas.

An implied rental contract which was the basis of the judgment secured against appellee by appellants is superseded and extinguished by and merged into the judgment entered thereon.

Pike v. *McDonald*, 32 Md. 418, 54 Am. Dec. 597.

Napier v. *Gidiere*, 40 Am. Dec. 613.

Wann v. *McNulty*, 7 Ill. 355, 43 Am. Dec. 58.

Newman v. *Erwin*, 44 La. Ann. 1114.

Whatever the previous cause of action may have been it is merged in the judgment.

Goodrich v. *Dunbar*, 17 Barb. 644.

Nicholl v. *Mason*, 21 Wend. 341.

Seylam v. *Barber*, 18 N. Y. 468, 75 Am. Dec. 254.

A judgment is not such a contract as the Federal Constitution was intended to protect against legislation tending to impair obligations.

Evans-Snyder-Buell Company v. *McFadden*, 105 Federal 293, 44 C. C. A. 494, 58 L. R. A. 900.

In *Evans-Snyder-Buell Company* v. *McFadden*, *supra*, Justice Thayer, speaking for the court, said:

"No contract is disclosed by the record which the Act of Congress in question operates to impair. It is true that the attaching creditors have a judgment against J. R. Blocker, and that judgments are sometimes termed contracts of record, but such general statements mean only that the law will imply a promise on the part of a judgment debtor to pay a judgment that has been recovered against him, and that he may be sued in form *ex contractu* on such implied promise. A contract of that nature, however, which does not rest on the mutual assent of the parties thereto, but is forced upon the judgment debtor as a result of the legal implication, *is not such a contract as the Federal Constitution was intended to protect against legislation tending to impair its obligation.* This proposition is well established by controlling authority."

Citing *Louisiana ex rel Folsom* v. *New Orleans*, 109 U. S. 285.

Garrison v. *New York*, 22 Law Ed. 612-14.

In *Morley* v. *Lake Shore and M. S. Railway Company*, 146 U. S. 162, this court held that:

"A judgment is in no sense a contract or agreement between the parties."

Citing *Wyman* v. *Mitchell*, 1 Cow. 316-21.

In *Read* v. *Mississippi County*, 69 Ark. 365, the court held that a judgment is not a contract.

Act 102 does not impair the obligation of any contract between the parties for the reason that it is a remedial statute; and only governs the issuance of garnishment in certain cases. In the case at bar the fund in question was not in existence at the time Mrs. W. D. Thomas entered into an implied rental contract with the appellant, W. B. Worthen Company, Agent.

Justice Kirby, who wrote the opinion in this case, had this to say:

> "* * * was not enacted for the purpose of allowing beneficiaries exemptions which they are not entitled to under the constitution and laws of this State, but the act was passed for the purpose of exempting these funds from the operation of our general statutes, regulating issuance of garnishments and proceedings thereunder."

In the recent case of *Home Building and Loan Association* v. *Blaisdell*, 54 Supreme Court Reporter, page 231, Chief Justice Hughes quoted *Sterges* v. *Crowinshield*, 4 Wheat. 200, 4 Law Edition 529. Chief Justice Marshall pointed out the distinction between the obligation and remedy, and said:

> "The distinction between the obligation of a contract and the remedy given by the Legislature to enforce that obligation has been taken at the bar and exists in the nature of things. Without impairing the

obligation of a contract, the remedy may certainly be modified as the wisdom of the nation may direct."

We concede that if the Legislature of the State of Arkansas had sought to take away every remedy for the enforcement of the judgment in question here, that this act, Act 102, would be unconstitutional. However, the Supreme Court of Arkansas has construed Act 102 to only affect the remedy of garnishment in certain cases. The Legislature of Arkansas created the writ of garnishment, there being no such writ at common law.

Mr. Sutherland in his work on St. Constr., Section 482, said:

"No person can claim a vested right in any particular mode of procedure for the enforcement or defense of his rights. A remedy may be provided for existing rights and new remedies may be added or substituted for those which exist. Every case must to a considerable extent depend upon its own circumstances. General words and remedial statutes may be applied to past transactions in the pending cases, according to all indications of legislative intent, and this may be greatly influenced by consideration of convenience and reasonableness and justice."

Judge Cooley in his work on Constitutional Limitations at page 346, said:

"Such being the obligation of a contract, it is obvious that the rights of parties in respect to it are liable to be affected in many ways, by changes in the laws, which it could not have been the intention of the con-

stitutional provision to preclude. There are few laws which concern the general policy of a State, or the government of its citizens in their intercourse with each other or with strangers, which may not in some way or other affect the contracts which they have entered into or may thereafter form. Creditors as well as debtors are presumed to know that the Legislature has an inherent power to enlarge, limit, alter or repeal remedial statutes, provided that contracts are not directly impaired, and a remedy be left, though less convenient and less prompt and speedy, than the one so changed or repealed. Also to enact such laws as, 'according to its own views of policy and humanity, it may deem necessary to protect the citizens of the State from unjust, merciless, and oppressive litigation and other evils detrimental to the common weal, and protect them in those pursuits of industry, and secure to them those privileges and rights, which experience has already shown, or in the future may be shown, to be necessary to the prosperity and strength of the State, although such necessary laws may in some way or other affect contracts previously entered into'."

In *Home Building and Loan Association* v. *Blaisdell*, *supra*, Chief Justice Hughes said:

"Not only are existing laws read into contracts an order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a govern-

ment by virtue of which contractual relations are worthwhile. A government which retains adequate authority to secure the peace and good order of system. This principle of harmonizing the constitutional prohibition with the necessary *residium* of State power has had progressive recognition in the decisions of this court."

The case of *Evans-Snyder-Buell Company* v. *McFadden, supra,* approved by this court in 185 U. S. 505, is squarely in point with the case at bar. Justice Thayer delivered the opinion of the court and said:

"Considered as an original proposition, the weight of reason, as well as the authorities on kindred questions, sustain the view that an attachment lien—at least until a final judgment is rendered in the case—may be impaired, displaced, or destroyed by legislative enactments which are designed to have that effect, and that attaching creditors have no just ground to complain of such legislation. A writ of attachment is nothing more than a remedy afforded by law for the collection of a debt. It is like a *capias ad respondendum,* and a remedy of that nature may be abolished at any time by the Legislature which created it. The same proposition holds good with respect to all laws, which merely provide remedies for the enforcement of rights or the redress of grievances. They may be modified or repealed without reference to the effect of such legislation on pending actions, the only limitation on the power of the Legislature in this respect being that an adequate remedy must remain or be provided for the

enforcement of such existing rights as have their origin in private contracts. In actions *ex contractu* litigants are not entitled to insist that they shall be afforded the same remedies or be privileged to plead all of the defenses that were available when the contract was made, or that have accrued subsequently under existing laws; the rule being that remedies, and those rights pertaining to the remedy which are purely of statutory creation may be altered or abolished, even after an action is instituted, provided an adequate remedy remains for rights founded on contract and that some defenses, such as those existing under usury laws and those that have accrued under statutes of limitation, may be withdrawn, and rendered of no avail."

SECOND. THE CONSTRUCTION PLACED ON ACT 102 BY THE SUPREME COURT OF ARKANSAS DOES NOT OPERATE TO TAKE PROPERTY WITHOUT DUE PROCESS OF LAW.

It is argued that Act 102 as construed by the Supreme Court of Arkansas deprives this appellant of a vested right without due process of law. We do not think that this proposition was raised properly or that this matter is properly before this court. Appellants did not raise this issue in the Pulaski Circuit Court, and under the decisions of the Supreme Court of Arkansas, this matter could not have been passed on by the Supreme Court of Arkansas.

Leonard v. *Luther*, 185 Ark. 572.

Gibbes v. *Zimmerman, et al*, 54 Supreme Court Reporter, page 140.

We do not feel, however, that there is any merit in the contention of appellants that Act 102 operates to take property without due process of law, even should this court rule that this matter is properly before it. There is nothing in the Federal or State constitution which prohibits the Legislature of Arkansas from passing retrospective laws.

Green v. *Abraham*, 43 Ark. 420.

Appellants have no property right or vested interest in any form of procedure or in the remedy of garnishment. This proposition was also passed on in the case of *Evans-Snyder-Buell Company* v. *McFadden*. In this case it was held:

> "A legislative body like the Congress of the United States, which is not prohibited from passing retrospective or retroactive laws, *has an undoubted power to divest or impair an attachment lien*—at least until there has been an adjudication that adequate grounds for the attachment exist, and that the lien of attachment be enforced. The power of Congress to deal with a remedy which it has provided for the collection of a debt does not cease as respects a suitor who has simply taken the initial steps to avail himself of the remedy, but whose rights have not been finally adjudicated. The power in question continues, in any event, until such time as, by making use of the remedy, the suitor has acquired a title to or an interest in specific property which the parties to the action are no longer privileged to deny. It is only at such period that his rights can be said to have become vested. Prior thereto they are merely conditional or inchoate."

Judge Thayer had this further to say:

"Considered as an original proposition, the weight of reason, as well as the authorities on kindred questions, sustains the view that an attachment lien, at least until a final judgment is rendered on the case, may be impaired, displaced or destroyed by legislative enactments which are designed to have that effect, and that attaching creditors have no just grounds to complaint of such legislation."

There is another reason why this case should not be reversed. Act 102 of the Acts of Arkansas of 1933 specifically provides in Section 2 that:

"All laws and parts of laws in conflict herewith are hereby repealed, provided, however, that nothing in this act shall be construed to repeal, modify or alter the provisions of Act 76 and Act 141 of the Acts of the General Assembly of 1931."

Act 141 of the Acts of Arkansas of 1931 was approved March 30, 1931, and went into effect ninety days thereafter. This act is as follows:

"Section 1. That Section 5579 of Crawford & Moses' Digest of the Statutes of Arkansas be amended to read as follows:

" 'Section 5579. It shall be lawful for any married woman, by herself and in her name, or in the name of any third person, with his assent, as her trustee, to cause to be insured, for her sole use, the life of her husband, for any definite period, or for the term of his

natural life; and, in case of her surviving her husband, the sums or net amount of the insurance becoming due and payable by the terms of the insurance shall be payable to her and for her use; and, in case of the death of the wife before the decease of her husband, the amount of said insurance may be made payable to his or her children, for their use, and to their guardian for them, if they shall be under age, as shall be provided in the policy of insurance; and all proceeds and avails of such insurance shall be free from the claims of the representatives of the husband, or of any of his creditors, whether or not the right to change the beneficiary is reserved or permitted; provided, that, subject to the statute of limitations, the amount of any premiums for said insurance paid out of the funds or property of the husband with intent to defraud creditors, with interest thereon, shall enure to their benefit from the proceeds of the policy; but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice, by or in behalf of a creditor of a claim to recover for premiums paid with intent to defraud creditors, with specifications of the amount claimed, provided, this act shall not apply to pending suits'."

The implied rental contract which is the basis of appellants' claim against the appellee was entered into on the 17th day of November, 1931, which was several months after Act 141, *supra*, went into effect. Act 141 of the Acts

of Arkansas of 1931 was copied after and is the same act as Chapter 80 of the Laws of New York of 1840. The New York Supreme Court in the case of *Baron* v. *Brummer*, 3 N. E. 474, interpreted Chapter 80 of New York Laws of 1840, as follows:

> "That Chapter 80 exempts the proceeds from insurance policies on a husband's life for the benefit of his wife from the claims of any of his creditors, except where the amount of premium paid exceeds a certain sum per annum. * * * Under these various provisions, it was the intention of the Legislature, as settled and determined by the courts in the cases already cited that such policies should not be subjected to the lien of creditors, either of the husband or wife—as to the former by the express words of the statute, and as to the latter by the determination of the courts."

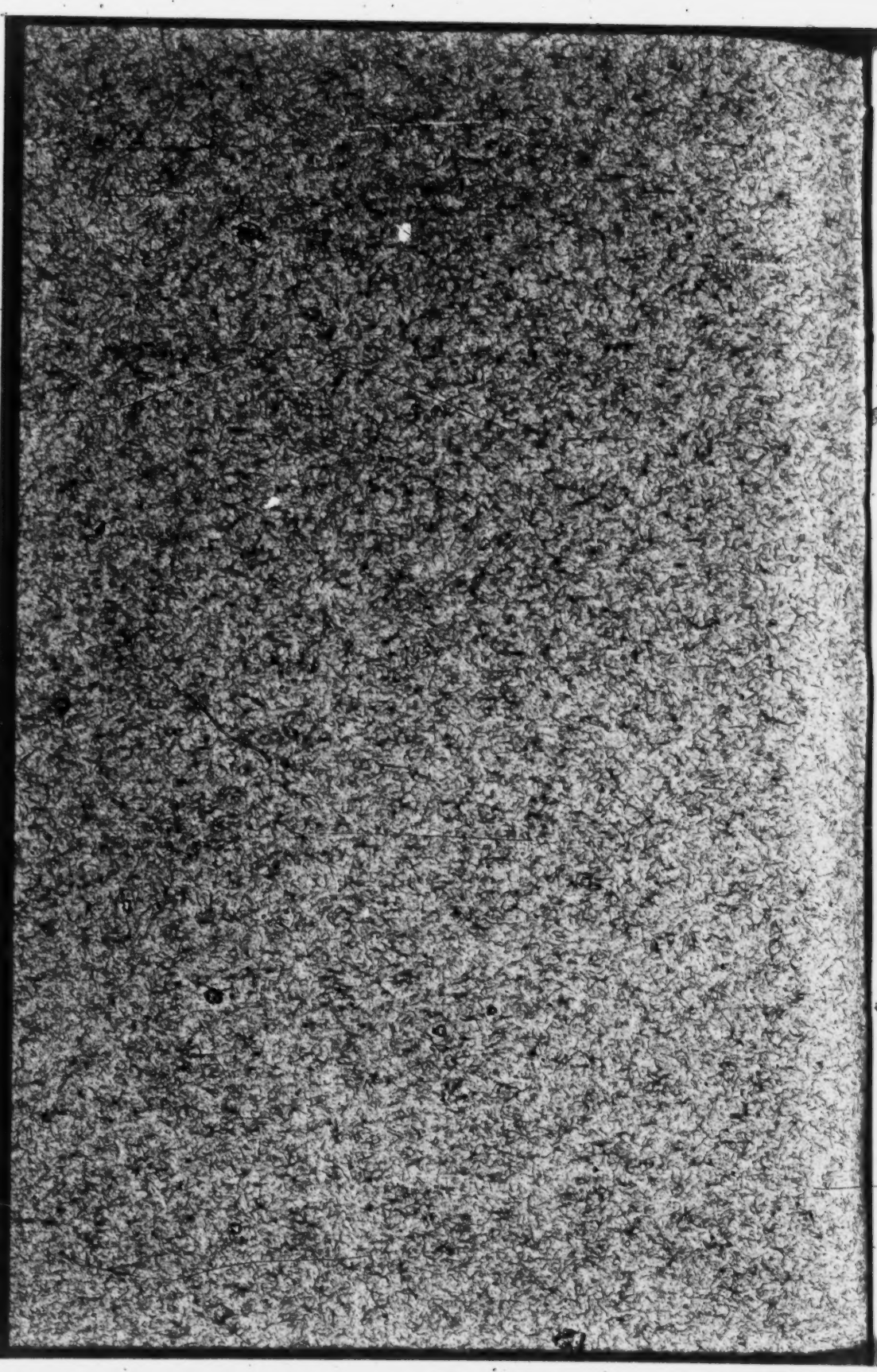
Inasmuch as Act 141 of the Acts of Arkansas of 1931 is copied after and is the same act as Chapter 80 of New York Laws of 1840, the doctrine of borrowed interpretation applies and Act 141, *supra*, will be and should be interpreted the same as the act after which it was copied.

Cathcart v. *Robinson*, 5 Peters (U. S.) 264.

We respectfully submit that the judgment of the Supreme Court of Arkansas should be affirmed.

Respectfully submitted,

FRED A. ISGRIG,
KENNETH W. COULTER AND
HARRY ROBINSON,
Attorneys for Appellee.



SUPREME COURT OF THE UNITED STATES.

No. 856.—October Term, 1933.

W. B. Worthen Company, Agent; George G. Worthen and Mollie P. Worthen, Appellants, *vs.* Mrs. W. D. Thomas. } Appeal from the Supreme Court of the State of Arkansas.

[May 28, 1934.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Appellee, Mrs. W. D. Thomas, and her husband, Ralph Thomas, were engaged in business as copartners in Little Rock, Arkansas, under the name of Enterprise Harness Company. They became indebted for the rent of premises leased to the partnership by appellant, W. B. Worthen Company, Agent. On August 31, 1932, judgment for the amount thus due ($1,200), with interest, was recovered against both partners. Ralph Thomas died on March 5, 1933. Thereupon, on March 10, 1933, a writ of garnishment was served upon the Missouri State Life Insurance Company alleging the indebtedness of that Company to Mrs. Thomas, in the sum of $5,000, as the beneficiary of a policy of insurance upon the life of Ralph Thomas. The service of the writ, under the laws of Arkansas, created a lien upon the indebtedness.[1]

A few days later, on March 16, 1933, the Legislature of Arkansas passed an Act—Act 102 of the Laws of 1933—providing as follows:

"All moneys paid or payable to any resident of this state as the insured or beneficiary designated under any insurance policy or policies providing for the payment of life, sick, accident and/or disability benefits shall be exempt from liability or seizure under judicial process of any court, and shall not be subjected to the payment of any debt by contract or otherwise by any writ, order, judgment, or decree of any court, provided, that the validity of any sale, assignment, mortgage, pledge or hypothecation of any policy of insurance or if any avails, proceeds or benefits thereof, now made,

[1]See Desha *v.* Baker, 3 Ark. 509, 520, 521; Martin *v.* Foreman, 18 Ark. 249, 251; Smith *v.* Butler, 72 Ark. 350, 351; St. Louis, Southwestern Ry. Co. *v.* Vandenberg, 91 Ark. 251, 255; Foster *v.* Pollack, 173 Ark. 48, 51.

or hereafter made, shall in no way be affected by the provisions of this act".

Appellee, on April 5, 1933, filed a motion to dismiss the writ of garnishment and for the purpose of scheduling the money owing to her by the Insurance Company as being exempt from seizure under judicial process. On April 6, 1933, the Insurance Company answered the garnishment, admitting its indebtedness. The court then ordered the payment of $2,000 into its registry as sufficient to cover appellant's claim and released the garnishee from further liability. Appellant responded to the motion to dismiss the garnishment, and to the claim of exemption, by insisting that Act 102 of the Laws of 1933, if so applied, contravened Article I, section 10, of the Constitution of the United States by impairing the obligation of appellant's contract. The court of first instance overruling that contention, and holding the insurance moneys to be free from all judicial process, dismissed the garnishment and granted the schedule of exemption. The judgment was affirmed by the Supreme Court of the State. 65 S. W. (2d) 917. The constitutional question was again urged by petition for rehearing, which was denied. The case comes here on appeal.

1. There is no question that the state court gave effect to the Act of 1933, and we are not concerned with any earlier state statute in relation to policies of insurance.[2] The debt of the wife herself, as a member of a business partnership, is involved. We have not been referred to any statute of Arkansas, existing prior to the firm's contract and to the incurring by appellee of the debt in question, which in such a case, either by the terms of the statute or by the construction of it by the state court, precluded resort to insurance moneys such as those in question.[3] The state court has mentioned none. On the contrary, the state court recognized the greater breadth of the Act of 1933, as compared with earlier statutes, and its controlling operation, and with this recognition sustained and applied it.[4] "The only question", said the court, "for

[2]Compare Section 5579, Crawford & Moses' Digest of the Statutes of Arkansas, 1921; Acts 76 and 141 of the Laws of Arkansas, 1931; Mente *v.* Townsend, 68 Ark. 391, 397; Townes *v.* Krumpen, 184 Ark. 910, 913.

[3]As to moneys payable by fraternal benefit societies, see Act 462 of Laws of Arkansas, 1917; Acree *v.* Whitley, 136 Ark. 149.

[4]See Wilmington & Weldon Railroad *v.* Alsbrook, 146 U. S. 279, 293; McCullough *v.* Virginia, 172 U. S. 102, 116, 117; Houston & Texas Railroad Co. *v.* Texas, 177 U. S. 66, 77; Appleby *v.* City of New York, 271 U. S. 364.

determination here is the constitutionality of Act 102 of 1933, approved March 16, 1933".

2. The exemption created by the Act of 1933, as to the avails of life insurance policies, is unlimited. There is no limitation of amount, however large. Nor is there any limitation as to beneficiaries, if they are residents of the State. There is no restriction with respect to particular circumstances or relations. "All moneys paid or payable" to any resident of the State "as the insured or beneficiary designated" under any life insurance policy, are exempted "from liability or seizure under judicial process" and "shall not be subjected to the payment of any debt." The profits of a business, if invested in life insurance, may thus be withdrawn from the pursuit of creditors to whatever extent desired. No conditions are imposed, save that assignees, mortgagees, or pledgees of policies are protected.

Such an exemption, applied in the case of debts owing before the exemption was created by the legislature, constitutes an unwarrantable interference with the obligation of contracts in violation of the constitutional provision. *Gunn* v. *Barry,* 15 Wall. 610, 622, 623; *Edwards* v. *Kearzey,* 96 U. S. 595, 604; *Bank of Minden* v. *Clement,* 256 U. S. 126, 129. Chief Justice Marshall, in *Sturges* v. *Crowninshield,* 4 Wheat. 122, 198, observed that "it is not true that the parties have in view only the property in possession when the contract is formed, or that its obligation does not extend to future acquisitions. Industry, talents, and integrity, constitute a fund which is as confidently trusted as property itself. Future acquisitions are, therefore, liable for contracts; and to release them from this liability impairs their obligation". This principle was applied to an exemption of insurance moneys, in relation to antecedent debts, in *Bank of Minden* v. *Clement, supra.* The argument of appellee that a judgment is not in itself a contract within the constitutional protection,[5] and that it is competent for the State to alter or modify forms of remedies, is unavailing. The judgment and garnishment in the instant case afforded the appropriate means of enforcing the contractual obligations of the firm of which appellee was a member and the statute altered substantial rights. *Gunn* v. *Barry, supra; Edwards* v. *Kearzey, supra; Fisk* v. *Jefferson Police Jury,* 116 U. S. 131, 134; *Home Building & Loan Association* v. *Blaisdell,* 290 U. S. 398, 430.

[5]See Morley *v.* Lake Shore Railway Co., 146 U. S. 162, 169.

3. The Legislature sought to justify the exemption by reference to the emergency which was found to exist. But the legislation was not limited to the emergency and set up no conditions apposite to emergency relief.

We held in *Home Building & Loan Association* v. *Blaisdell, supra,* pp. 434, *et seq.*, that the constitutional prohibition against the impairment of the obligation of contracts did not make it impossible for the State, in the exercise of its essential reserved power, to protect the vital interests of its people. The exercise of that reserved power has repeatedly been sustained by this Court as against a literalism in the construction of the contract clause which would make it destructive of the public interest by depriving the State of its prerogative of self-protection. We held that this reserved protective power extended not only to legislation to safeguard the public health, public safety, and public morals, and to prevent injurious practices in business subject to legislative regulation, despite interference with existing contracts,—an exercise of the State's necessary authority which has had frequent illustration—but also to those extraordinary conditions in which a public disaster calls for temporary relief. We said that the constitutional prohibition should not be so construed as to prevent limited and temporary interpositions with respect to the enforcement of contracts if made necessary by a great public calamity such as fire, flood or earthquake, and that the State's protective power could not be said to be non-existent when the urgent public need demanding relief was produced by other and economic causes. But we also held that this essential reserved power of the State must be construed in harmony with the fair intent of the constitutional limitation, and that this principle precluded a construction which would permit the State to adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them. We held that when the exercise of the reserved power of the State, in order to meet public need because of a pressing public disaster, relates to the enforcement of existing contracts, that action must be limited by reasonable conditions appropriate to the emergency. This is but the application of the familiar principle that the relief afforded must have reasonable relation to the legitimate end to which the State is entitled to direct its legislation. Accordingly, in the case of *Blaisdell,* we sustained the Minnesota mortgage moratorium law in the light of the temporary

and conditional relief which the legislation granted. We found that relief to be reasonable, from the standpoint of both mortgagor and mortgagee, and to be limited to the exigency to which the legistion was addressed.

In the instant case, the relief sought to be afforded is neither temporary nor conditional. In placing insurance moneys beyond the reach of existing creditors, the Act contains no limitations as to time, amount, circumstances, or need. We find the legislation, as here applied, to be a clear violation of the constitutional restriction.

The judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 856.—October Term, 1933.

W. B. Worthen Company, Agent; George Worthen and Mollie P. Worthen, Appellants, *vs.* Mrs. W. D. Thomas.	Appeal from the Supreme Court of the State of Arkansas.

[May 28, 1934.]

Mr. Justice Sutherland.

Mr. Justice Van Devanter, Mr. Justice McReynolds, Mr. Justice Butler and I concur unreservedly in the judgment of the court holding the Arkansas statute void as in contravention of the contract impairment clause of the federal Constitution. We concur thus specially because we are unable to agree with the view set forth in the opinion that the differences between the Arkansas statute and the Minnesota mortgage moratorium law, which was upheld as constitutional in the *Blaisdell* case, are substantial. On the contrary, we are of opinion that the two statutes are governed by the same principles and the differences found to exist are without significance, so far as the question of constitutionality is concerned. The reasons set forth in the dissenting opinion in the *Blaisdell* case, and the long line of cases previously decided by this court there cited, fully support this conclusion. We were unable then, as we are now, to concur in the view that an emergency can ever justify, or, what is really the same thing, can ever furnish an occasion for justifying, a nullification of the constitutional restriction upon state power in respect of the impairment of contractual obligations. Acceptance of such a view takes us beyond the fixed and secure boundaries of the fundamental law into a precarious fringe of extraconstitutional territory in which no real boundaries exist. We reject as unsound and dangerous doctrine, threatening the stability of the deliberately framed and wise provisions of the Constitution, the notion that violations of those provisions may be measured by the length of time they are to continue or the extent

of the infraction, and that only those of long duration or of large importance are to be held bad. Such was not the intention of those who framed and adopted that instrument. The power of this court is not to amend but only to expound the Constitution as an agency of the sovereign people who made it and who alone have authority to alter or unmake it. We do not possess the benevolent power to compare and contrast infringements of the Constitution and condemn them when they are long-lived or great or unqualified, and condone them when they are temporary or small or conditioned.